

No. 333PA17

TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

NORTH CAROLINA STATE
BOARD OF EDUCATION,

Plaintiff-Appellant,

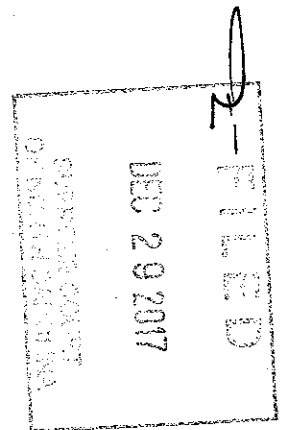
v.

THE STATE OF NORTH CAROLINA
and MARK JOHNSON,
in his official capacity,

Defendants-Appellees.

From Wake County

**PLAINTIFF-APPELLANT NORTH CAROLINA
STATE BOARD OF EDUCATION'S NEW BRIEF**



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**PLAINTIFF-APPELLANT NORTH CAROLINA
STATE BOARD OF EDUCATION'S NEW BRIEF**

ISSUE PRESENTED

- I. The North Carolina Constitution mandates that “[t]he State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support[,] subject to laws enacted by the General Assembly.” In December 2016, the General Assembly passed a law that attempted to transfer the Board’s constitutional powers to the Superintendent of Public Instruction. Does the North Carolina Constitution prohibit this attempt to statutorily transfer the Board’s constitutional powers?

INTRODUCTION

In this state constitutional challenge, the North Carolina State Board of Education (“the Board”) seeks to prevent the General Assembly from statutorily reassigning the Board’s constitutional powers to the Superintendent of Public Instruction (“the SPI”).

For 150 years, the constitutional power to supervise and administer the public school system has been vested in the Board. Article IX, Section 5 of the North Carolina Constitution provides:

The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.

N.C. Const. art. IX, § 5.

The Board is the only constitutional board in North Carolina. It is one of only a few constitutional entities or officers whose powers and duties are expressly listed in the North Carolina Constitution—like, for example, the Governor. N.C. Const. art. III, § 5.

Unlike the Board, the North Carolina Constitution does not confer any constitutional powers on the SPI. Instead, the SPI has a very narrow constitutional role: to serve as the “secretary and chief administrative officer of the [Board].” N.C. Const. art. IX, § 4(2).

In December 2016, however, the General Assembly attempted to statutorily reassign the Board’s constitutional powers to the newly elected SPI—an individual

who shares the General Assembly's political priorities, and whose experience consists of a few years of teaching and service on a local school board.¹

Following the new SPI's election, the General Assembly drafted this legislation in secret, revealing it for the first time a few weeks later in a special session. Less than 48 hours after the draft legislation was first introduced, it passed both the House and the Senate. Three days later, it was signed into law.

The flaw in this legislation (hereinafter "the Transfer Legislation") was obvious on its face: The General Assembly used the same constitutional text mandating that the Board supervise and administer the public school system, only it replaced the words "State Board of Education" with "Superintendent of Public Instruction." The following comparison illustrates this copying and pasting:

Article IX, Section 5 of the North Carolina Constitution	N.C. Sess. Law 2016-126 § 4
It shall be the "dut[y]" of <i>"the State Board of Education . . . [to] supervise and administer the free public school system[.]"</i>	"It shall be the duty of <i>the Superintendent of Public Instruction . . .</i> to have under his or her direction and control, all matters relating to the direct supervision and administration of the public school system."

¹ Speaking about his experience, the SPI stated, "This is my first job in my life where I have to really wear a suit every day." Hinchcliffe, *et al.*, *Fighting the status quo: Inside the combative world of NC's new public schools chief*, WRAL (Sept. 27 2017), available at <http://www.wral.com/-fighting-the-status-quo-inside-the-combative-world-of-nc-s-new-public-schools-chief/16918014/>.

Immediately after the Transfer Legislation was signed into law, the Board brought this constitutional challenge. That same day, the Superior Court issued a temporary restraining order. The basis of the Superior Court's TRO was straightforward: When a constitution expressly commits certain powers to an entity, those powers cannot be reassigned to someone else without a constitutional amendment.

A three-judge panel was later appointed to hear the case. At a hearing on the merits, at least one member of the three-judge panel shared his view that the text of the law was "very troubling." Nevertheless, the three-judge panel ultimately declined to invalidate the law.

The Board immediately appealed, and it filed a bypass petition with this Court. The Board also sought a stay of the trial court's decision during the pendency of the appeal, and when that stay was denied, it petitioned this Court for a writ of supersedeas.

On 8 December 2017, this Court granted the Board's bypass petition and its petition for writ of supersedeas. On 15 December 2017, the Court expedited this

appeal and placed it on a parallel track with its companion case, with oral argument scheduled for 7 February 2018.²

In this appeal, the Court will be asked to determine whether the Board's power is to "supervise and administer the free public school system," as the people so declared in Article IX, Section 5 of their Constitution, or whether, as the SPI contends, the Board's power "is whatever the General Assembly says it is."³ (T p 100) (emphasis added).

For the reasons that follow, this Court should reverse the three-judge panel's decision and hold that the Transfer Legislation is unconstitutional.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Background

Article I, Section 15 of the North Carolina Constitution provides that "[t]he people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right." N.C. Const. art. I, § 15. To ensure that the State

² This appeal concerns the Board's constitutional powers to "supervise and administer the free public school system and the educational funds provided for its support." N.C. Const. art. IX, § 5. The companion case challenges whether the General Assembly can statutorily reassign the Board's remaining constitutional power to "make all needed rules and regulations in relation [to the free public schools]." *Id.*; see No. 110PA16-2. Thus, taken together, these cases ask whether the General Assembly can statutorily reassign *all* of the Board's constitutional powers, reducing the Board to an empty shell that serves little purpose.

³ (T p 100) ([SPT's counsel]): "The people have said [the Board and the SPI] exist and that they have powers. And then the question is: What are their powers relative to each other? And it might – might sound flippant, but it's whatever the General Assembly says it is. I mean, that's what the Constitution says."

fulfills this duty, the people of North Carolina in their 1868 Constitution created the Board to supervise and administer North Carolina's free public schools.

Commensurate with this great responsibility, the 1868 Constitution conferred broad, sweeping, "legislat[ive]" rulemaking power on the Board. 1868 N.C. Const. art. IX, § 9, attached as Appx. 21. The 1868 Constitution provided that "[t]he Board of Education shall . . . have full power to legislate and make all needful rules and regulations in relation to Free Public Schools[.]" *Id.* Only an act of the General Assembly "alter[ing], amend[ing, or] repeal[ing]" a particular rule adopted by the Board could reject that rule. *See id.* ("[A]ll acts, rules and regulations of said Board may be altered, amended, or repealed by the General Assembly . . . , and when so altered, amended or repealed they shall not be re-enacted by the Board.").

Today, Article IX, Section 5 of the North Carolina Constitution provides:

The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.

N.C. Const. art. IX, § 5.

That constitutional provision means exactly what it says: "The State Board of Education is in charge of the public school system[.]" John V. Orth and Justice Paul M. Newby, *The North Carolina State Constitution*, at 180 (2d ed. 2013).

The Board's constitutional composition makes it well-equipped for this constitutional role. Under Article IX, Section 4 of the North Carolina Constitution, the Board is composed of "the Lieutenant Governor, the Treasurer, and eleven members appointed by the Governor, subject to confirmation by the General

Assembly in joint session.”⁴ N.C. Const. art. IX, § 4. Article IX, Section 4 requires that these Board members serve “overlapping terms of eight years.” *Id.* These lengthy, overlapping terms ensure that the Board maintains its institutional knowledge and expertise in public education, and is insulated from political pressure.

In addition, Article IX, Section 4 requires that eight of the Governor’s eleven appointments must be made from each of the eight educational districts. This geographic diversity ensures that the Board is representative of the people. *Id.*

The genius of the framer’s design—a constitutional board committed solely to public education, and composed of politically and geographically diverse members who serve lengthy, overlapping terms—enables the Board to place public education above politics. These design features allow the Board to effectively supervise and administer the State’s \$10 billion public school system for the benefit of its 1.5 million schoolchildren.

The Transfer Legislation

In 2004, June Atkinson was elected SPI. (R p 55). She was re-elected in 2008 and 2012. *Id.* On 8 November 2016, Mark Johnson was elected SPI. *Id.*

On 14 December 2016, without any opportunity for input from the education community, the Board, or the public, the General Assembly introduced House Bill

⁴ This reflects the Board’s current composition. In the 1868 Constitution, the Board was an *ex officio* board. N.C. Const. of 1868, art. IX, § 7. As part of the 1942 amendment discussed below, the Board’s composition was changed to a board with appointed board members and the Lieutenant Governor, Treasurer, and SPI serving as *ex officio* members. N.C. Const. of 1868 (amended 1942) art. IX, § 8.

17 in the General Assembly. (R p 56). Within two days, it passed both the House of Representatives and the Senate. *Id.* Three days later, on 19 December 2016, House Bill 17 was signed into law as Session Law 2016-126. (R pp 18-37, attached as Appx. 1-20).

The Transfer Legislation appears in Part I, Sections 1-12, 14-17, 24-25, and 28-30 of Session Law 2016-126, which amend existing statutes.⁵ Historically, these statutes stood as a recognition by the General Assembly—albeit an unnecessary one—that the North Carolina Constitution vested the Board with certain constitutional powers. The Transfer Legislation amended these statutes with precision, however, to replace the words “State Board of Education” with “Superintendent of Public Instruction.” Thus, the Transfer Legislation attempted to use the same statutes that *recognized* the Board’s constitutional powers as a vehicle for *transferring* them.

The Transfer Legislation attempted to accomplish two unconstitutional objectives:

First, the Transfer Legislation attempted to transfer to the SPI the Board’s constitutional power to supervise and administer the public school system generally. (R pp 56-59). Most notably, Section 4 of the Transfer Legislation states: “It shall be the duty of the Superintendent of Public Instruction . . . to have under

⁵ The Board did not challenge other, unrelated provisions in Session Law 2016-126. For example, the Board did not challenge the unrelated provisions concerning the transfer of the Center for Safer Schools and its staff (including its Executive Director, Kym Martin) to the Department of Instruction. N.C. Session Law 2016-126 § 41.1(a)-(b).

his or her direction and control, all matters relating to the direct supervision and administration of the public school system.” N.C. Sess. Law 2016-126 § 4 (amending N.C.G.S. § 115C-21(a)(5)).

In addition to this full transfer, the Transfer Legislation included other provisions that attempted to implement that transfer. Those provisions included:

- N.C. Sess. Law 2016-126 § 1 (creating N.C.G.S. § 115C-11(i));
- N.C. Sess. Law 2016-126 § 1 (creating N.C.G.S. § 115C-11(j));
- N.C. Sess. Law 2016-126 § 2 (amending N.C.G.S. § 115C-12);
- N.C. Sess. Law 2016-126 § 3 (amending N.C.G.S. § 115C-19);
- N.C. Sess. Law 2016-126 § 4 (amending N.C.G.S. § 115C-21(a)(1));
- N.C. Sess. Law 2016-126 § 4 (amending N.C.G.S. § 115C-21(a)(2));
- N.C. Sess. Law 2016-126 § 4 (amending N.C.G.S. § 115C-21(a)(3));
- N.C. Sess. Law 2016-126 § 4 (amending N.C.G.S. § 115C-21(a)(4));
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- N.C. Sess. Law 2016-126 § 4 (amending N.C.G.S. § 115C-21(b)(2));
- N.C. Sess. Law 2016-126 § 4 (amending N.C.G.S. § 115C-21(b)(3));
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- N.C. Sess. Law 2016-126 § 4 (amending N.C.G.S. § 115C-21(b)(5));
- N.C. Sess. Law 2016-126 § 4 (amending N.C.G.S. § 115C-21(b)(6));

- N.C. Sess. Law 2016-126 § 4 (amending N.C.G.S. § 115C-21(b)(7));
- N.C. Sess. Law 2016-126 § 4 (amending N.C.G.S. § 115C-21(b)(8));
- N.C. Sess. Law 2016-126 § 4 (amending N.C.G.S. § 115C-21(b)(9));
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- N.C. Sess. Law 2016-126 § 8 (amending N.C.G.S. § 126-5(d)(4));
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- N.C. Sess. Law 2016-126 § 8 (amending N.C.G.S. § 126-5(d)(6));
- N.C. Sess. Law 2016-126 § 9 (amending N.C.G.S. § 143-745(a)(1));
- N.C. Sess. Law 2016-126 § 10 (amending N.C.G.S. § 143A-44.1);
- N.C. Sess. Law 2016-126 § 11 (repealing N.C.G.S. § 143A-44.2);
- N.C. Sess. Law 2016-126 § 12 (amending N.C.G.S. § 143A-44.3);
- N.C. Sess. Law 2016-126 § 14 (amending N.C.G.S. § 115C-75.5(4));
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- N.C. Sess. Law 2016-126 § 16 (amending N.C.G.S. § 115C-150.11);
- N.C. Sess. Law 2016-126 § 17 (amending N.C.G.S. § 115C-218);
- N.C. Sess. Law 2016-126 § 24 (amending N.C.G.S. § 115C-521);
- N.C. Sess. Law 2016-126 § 25 (amending N.C.G.S. § 115C-535);
- N.C. Sess. Law 2016-126 § 28 (amending Section 8.37(a) of S.L. 2015-241);
- N.C. Sess. Law 2016-126 § 29; and

- N.C. Sess. Law 2016-126 § 30.

Second, the Transfer Legislation attempted to transfer to the SPI the Board's constitutional powers to supervise and administer the public school system's *funds*. (R pp 59-60). Most notably, the Transfer Legislation states that "it shall be the duty of the Superintendent of Public Instruction . . . [t]o administer funds appropriated for the operations of the State Board of Education and for aid to local school administrative units." N.C. Sess. Law 2016-126 § 4 (amending N.C.G.S. § 115C-21(b)(1b)). Likewise, Sections 3 and 4 state that the SPI, as the head of the Department of Public Instruction, will "administer the funds appropriated for [the Department's] operation." *Id.* § 3 (amending N.C.G.S. § 115C-19); *id.* § 4 (amending N.C.G.S. § 115C-21(a)(1)).

In addition to this full transfer, the Transfer Legislation included other provisions that attempted to implement that transfer. Those provisions included:

- N.C. Sess. Law 2016-126 § 1 (creating N.C.G.S. § 115C-11(i));
- N.C. Sess. Law 2016-126 § 1 (creating N.C.G.S. § 115C-11(j));
- N.C. Sess. Law 2016-126 § 4 (amending N.C.G.S. § 115C-21(a)(1));
- N.C. Sess. Law 2016-126 § 4 (amending N.C.G.S. § 115C-21(a)(6));
- N.C. Sess. Law 2016-126 § 4 (amending N.C.G.S. § 115C-21(a)(9));
- N.C. Sess. Law 2016-126 § 4 (creating N.C.G.S. § 115C-21(b)(1b));
- N.C. Sess. Law 2016-126 § 4 (amending N.C.G.S. § 115C-21(b)(5));
- N.C. Sess. Law 2016-126 § 5 (amending N.C.G.S. § 115C-408(a));
- N.C. Sess. Law 2016-126 § 6 (amending N.C.G.S. § 115C-410);

- N.C. Sess. Law 2016-126 § 7 (amending N.C.G.S. § 126-5(d));
- N.C. Sess. Law 2016-126 § 12 (amending N.C.G.S. § 143A-44.3);
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- N.C. Sess. Law 2016-126 § 25 (amending N.C.G.S. § 115C-535);
- N.C. Sess. Law 2016-126 § 28 (amending Section 8.37(a) of S.L. 2015-241);
- N.C. Sess. Law 2016-126 § 28 (amending Section 8.37(b) of S.L. 2015-241);
- N.C. Sess. Law 2016-126 § 28 (amending Section 8.37(c) of S.L. 2015-241);
- N.C. Sess. Law 2016-126 § 29; and
- N.C. Sess. Law 2016-126 § 30.

In sum, the Transfer Legislation attempted to statutorily reassign the Board's constitutional powers to the SPI.

The Board's Constitutional Challenge

On 29 December 2016, the Board brought this constitutional challenge. (R p 3). The Board sought a temporary restraining order, a preliminary injunction, and a permanent injunction. *Id.*

On the same day the Board filed the complaint, Judge Donald W. Stephens held a hearing on the Board's TRO motion. At the hearing, Judge Stephens remarked that the Board's entitlement to relief was "straightforward," that he "[did

not] see any ambiguity,” and that the law is “significantly likely to be unconstitutional on its face.” (R Supp pp 34-35, 37-38). Judge Stephens ultimately issued a TRO enjoining the Transfer Legislation. (R p 38).

On 30 December 2016, a three-judge panel was appointed. (R p 42). On 6 January 2017, Judge Stephens’ TRO was extended by consent order until the three-judge panel resolved the Board’s motion for preliminary injunction. (R p 43).

On 30 January 2017, the Board moved for summary judgment. (R p 46). On 12 April 2017, the State moved to dismiss, and the SPI filed a cross-motion for summary judgment. (R pp 68, 83). The three-judge panel set a hearing on the parties’ cross-dispositive motions for 29 June 2017. (R p 85).

At the hearing on those motions, one member of the panel acknowledged that the General Assembly’s cutting and pasting of the text of the North Carolina Constitution into legislation and replacing the words “State Board of Education” with “Superintendent” was “very troubling.”⁶ Nevertheless, the three-judge panel issued a decision on 14 July 2017 upholding the Transfer Legislation.

The three-judge panel’s seven-page memorandum decision declined to engage with the Board’s primary arguments or grapple in any meaningful way with the constitutional issues that were briefed extensively throughout the course of this litigation. (R pp 87-93). Instead, the three-judge panel concluded quite simply that

⁶ Alex Granados, *Three judge panel hears arguments on education governance authority*, EducationNC (Jun. 29, 2017), available at www.ednc.org/2017/06/29/three-judge-panel-hears-arguments-education-governance-authority/.

the Transfer Legislation—including the copied-and-pasted language shown in the comparison above—“does not transfer the State Board’s power.” (R p 91).

For several reasons, this conclusion was remarkably unsound:

First and foremost, if copying and pasting the Board’s constitutional powers into a statute and replacing “State Board of Education” with “Superintendent of Public Instruction” is not a “transfer of power,” it begs the question of what could be.

Second, both the SPI and the State *conceded* that the Transfer Legislation did, in fact, transfer the Board’s constitutional powers. The SPI conceded that the Transfer Legislation “reallocated” the Board’s powers. (R Supp pp 141-42). Meanwhile, although the State later walked back this concession, it conceded in open court that the “plain meaning” of the Transfer Legislation was to strip the Board of its constitutional powers to supervise and administer the public school system, leaving it with only the power “to make rules and regulations.” (R Supp p 39). Thus, the panel’s decision was based on a meritless premise that both of the Defendants had conceded.

Third, in its short decision concluding that the Transfer Legislation “does not transfer the State Board’s power,” the three-judge panel simultaneously concluded that the Transfer Legislation “*transfers a number of powers . . . from the State Board to the Superintendent.*” (R pp 88, 91) (emphasis added). Thus, the panel’s decision was not even internally consistent.

The Board gave notice of appeal on 20 July 2017. (R p 95). The Board also sought a stay of the three-judge panel's decision during the pendency of the appeal. (R p 97). After the three-judge panel denied the stay, the Board moved the Court of Appeals for a temporary stay and also petitioned for a writ of supersedeas. (R p 99). After the Court of Appeals largely denied those requests, the Board moved this Court for a temporary stay and also petitioned for a writ of supersedeas. On 16 October 2017, this Court issued a temporary stay of the three-judge panel's decision. (R p 101).

On 14 November 2017, the Board filed the record on appeal with the Court of Appeals, and the appeal was docketed the same day. On 15 November 2017, the Board filed a bypass petition seeking this Court's discretionary review prior to a determination by the Court of Appeals. On 8 December 2017, this Court allowed the Board's bypass petition, and it also allowed its petition for writ of supersedeas.

On 15 December 2017, the Court expedited this appeal and placed it on a parallel track with its companion case, with oral argument scheduled for 7 February 2018.

STATEMENT OF GROUNDS FOR APPELLATE REVIEW

This appeal is before the Court pursuant to the Court's 8 December 2017 order allowing the Board's petition for discretionary review prior to determination by the Court of Appeals under Rule 15(a) of the North Carolina Rules of Appellate Procedure and N.C.G.S. § 7A-31(b).

STANDARD OF REVIEW

This Court reviews the trial court's grant of summary judgment *de novo*. *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008).

As this Court recently stated, “[i]f there is a conflict between a statute and the Constitution, [the] Court must determine the rights and liabilities or duties of the litigants before it in accordance with the Constitution, because the Constitution is the superior rule of law in that situation.” *City of Asheville v. North Carolina*, No. 391PA15, 794 S.E.2d 759, 766 (N.C. Dec. 21, 2016).

SUMMARY OF ARGUMENT

Since 1868, the constitutional power to supervise and administer the public school system and its funds has been vested in the Board. That express commitment of constitutional power to the Board is indisputable.

Instead, the dispute in this case turns on the eight-word phrase at the end of Article IX, Section 5: “subject to laws enacted by the General Assembly.” This appeal presents an issue of first impression: How should those eight words be interpreted and applied to the Transfer Legislation?

In answering this question, the Court has a choice between two paths:

First, the Court could adopt the Board's interpretation: The Constitution vests the Board with the constitutional power to supervise and administer the public school system and its funds, while the SPI has a narrow constitutional role as the secretary and chief administrative officer of the Board. The General Assembly, in turn, can legislate on public education matters, but it cannot reassign the Board's powers to the SPI without a constitutional amendment.

Alternatively, there is the Defendants' more expansive interpretation: "[S]ubject to laws enacted by the General Assembly" means that the Board's constitutional power "is whatever the General Assembly says it is" (T p 100), so the General Assembly can statutorily reassign the Board's constitutional powers if that is what it wants to do.

The Board's interpretation offers several superior qualities:

- It gives effect to every word of Article IX, Section 5's plain language.
- It faithfully implements the framers' intent, which was to vest the Board with the power to supervise and administer the public school system, and to dispel any notion that the SPI could possess the same power.
- It ensures that constitutional powers cannot be statutorily reassigned—a dangerous concept that this Court has guarded against for nearly 150 years.

Conversely, the Defendants' interpretation suffers from multiple flaws:

- It conflicts with Article IX, Section 5's plain language.
- It would effectuate the *opposite* of the framers' intent by allowing the General Assembly to transfer powers to the SPI that the framers expressly intended for the Board to exercise.
- It would allow the General Assembly to statutorily reassign constitutional powers, setting a dangerous precedent without any limiting principle.

For these reasons, the Court should hold that the Transfer Legislation is unconstitutional. The three-judge panel's decision to the contrary should be reversed.

ARGUMENT

I. The General Assembly's attempt to statutorily reassign the Board's constitutional powers is unconstitutional.

A. The Transfer Legislation violates Article IX's plain language.

Constitutional interpretation begins with the plain language as it appears in the text. *See, e.g., Coley v. State*, 360 N.C. 493, 498, 631 S.E.2d 121, 125 (2006). Unless an application of the plain language would frustrate the framers' intent, *see N.C. State Bar v. DuMont*, 304 N.C. 627, 633-34, 286 S.E.2d 89, 93-94 (1982), then the plain language is where the Court's analysis begins and ends. *See Martin v. State*, 330 N.C. 412, 416, 410 S.E.2d 474, 476 (1991); *In re Appeal of Univ. of N.C.*, 300 N.C. 563, 573, 268 S.E.2d 472, 478 (1980).

As part of this plain-language construction, the Court must give effect to each and every word of the text. *See Town of Boone v. State*, No. 93A15-2, 794 S.E.2d 710, 715 (N.C. Dec. 21, 2016) ("Each word informs a proper understanding of the whole."). This rule requires the Court to "lean in favor of a construction which will render every word operative, rather than one which may make some words idle and nugatory." *Bd. of Educ. v. Bd. of Comm'rs*, 137 N.C. 310, 312, 49 S.E. 353, 354 (1904) (quoting Thomas M. Cooley, *Cooley's Constitutional Limitations* 92 (7th ed. 1903)); *see also, e.g., Lacy v. Fid. Bank of Durham*, 183 N.C. 373, 380, 111 S.E. 612, 615 (1922) (stating that the constitution should be "construed so as to allow

significance to each and every part of it if this can be done by any fair and reasonable intendment”).

Here, there are more than two dozen words of text that vest the Board with the constitutional power to supervise and administer the public school system and its funds. Article IX, Section 5 of the North Carolina Constitution states:

The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.

N.C. Const. art. IX, § 5 (emphasis added).

By contrast, the plain language of Article IX, Section 4 states that “[t]he Superintendent of Public Instruction shall be the secretary and chief administrative officer of the [Board].” N.C. Const. art. IX, § 4(2) (emphasis added).

As noted above, the Court must “lean in favor of a construction which will render every word operative.” *Bd. of Educ.*, 137 N.C. at 312, 49 S.E. at 354. Under this rule of plain-language construction, those words mean exactly what they say: The Constitution vests the Board with the constitutional power to supervise and administer the public school system and its funds, while the SPI is the secretary and chief administrative officer of the Board.

In violation of this plain language, however, the Transfer Legislation attempts to statutorily reassign the Board’s constitutional powers to the SPI, and in the process, flip flops their constitutional roles. The Transfer Legislation does so in two ways:

First, as described more fully above, the Transfer Legislation attempts to transfer to the SPI the Board's constitutional power to supervise and administer the public school system generally. (R pp 56-59). Most notably, Section 4 of the Transfer Legislation states: "It shall be the duty of the Superintendent of Public Instruction . . . [t]o have under his or her direction and control, all matters relating to the direct supervision and administration of the public school system." N.C. Sess. Law 2016-126 § 4 (amending N.C.G.S. § 115C-21(a)(5)).

Second, as described more fully above, the Transfer Legislation attempts to transfer to the SPI the Board's constitutional power to supervise and administer the public school system's *funds*. (R pp 59-60). Most notably, the Transfer Legislation states that "it shall be the duty of the Superintendent of Public Instruction to . . . administer funds appropriated for the operations of the State Board of Education and for aid to local school administrative units." N.C. Sess. Law 2016-126 § 4 (amending N.C.G.S. § 115C-21(b)(1b)). Likewise, Sections 3 and 4 state that the SPI, as the head of the Department of Public Instruction, will "administer the funds appropriated for [the Department's] operation." *Id.* § 3 (amending N.C.G.S. § 115C-19); *id.* § 4 (amending N.C.G.S. § 115C-21(a)(1)).

Thus, the Transfer Legislation attempts to transfer to the SPI the same powers that the people of North Carolina in their Constitution vested in the Board. By attempting to do so, the Transfer Legislation seeks to rewrite Sections 4 and 5 of Article IX as follows:

Section 4. The Superintendent of Public Instruction shall ~~be the secretary and chief administrative officer of the State Board of~~

Education have under his or her direction and control, all matters relating to the direct supervision and administration of the public school system.

Section 5. The State Board of Education ~~shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article,~~ and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.

N.C. Const. art. IX, §§ 4-5 (alterations added).

As these points show, the Transfer Legislation violates the plain language of Article IX.

In an attempt to circumvent this plain language, however, Defendants have suggested a self-serving, expansive interpretation of the phrase “subject to laws enacted by the General Assembly.” Defendants contend that these eight words mean that the Board’s power “is whatever the General Assembly says it is” (T p 100), and, therefore, the General Assembly can statutorily reassign the Board’s constitutional powers to the SPI if it wants.

As discussed below, however, that interpretation directly contradicts the framers’ intent, as well as the bedrock principle of constitutional law that constitutional powers cannot be statutorily reassigned.

B. The framers intended to vest the Board with the power to supervise and administer the public school system, and to dispel any notion that the SPI could possess the same power.

1. The intent of the framers is clear.

When courts interpret the North Carolina Constitution, they “are bound to ‘give effect to the intent of the framers of the organic law and of the people adopting it.’” *Beaufort Cty. Bd. of Educ. v. Beaufort Cty. Bd. of Comm’rs*, 363 N.C. 500, 505,

681 S.E.2d 278, 282 (2009) (quoting *Perry v. Stancil*, 237 N.C. 442, 444, 75 S.E.2d 512, 514 (1953)); *see also, e.g., DuMont*, 304 N.C. at 633-34, 286 S.E.2d at 93-94.

Here, the framers' intent was clear, and it only supports one interpretation of Article IX: It was intended to vest the Board with the power to supervise and administer the public school system, and to dispel any notion that the SPI could possess the same power.

a. The 1868 Constitution

Article I, Section 15 of the North Carolina Constitution established the principle that "[t]he people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right." N.C. Const. art. I, § 15. These strong words were first included in the 1868 Constitution. Since then, they have remained part of the Constitution without change.

These words are unique to North Carolina. No other state constitution includes any right to education in its bill of citizens' rights.

To ensure that the State lived up to its promise to "guard and maintain" the right to public education, the people of North Carolina in their 1868 Constitution created the Board. *See Hoke Cty. Bd. of Educ. v. State*, 358 N.C. 605, 614-15, 621-22 n.8, 599 S.E.2d 365, 376, 380 n.8 (2004) (observing that the Board has "constitutional obligations to provide the state's school children with an opportunity for a sound basic education").

As the Supreme Court succinctly explained in 1871, the 1868 Constitution "establishes the public school system[,] the General Assembly provides for it[,] and the State Board of Education . . . manage[s] it." *Lane v. Stanly*, 65 N.C. 153, 157

(1871); *see also* Orth and Newby, *supra*, at 180 (“The State Board of Education is in charge of the public school system[.]”).

The 1868 Constitution conferred broad, sweeping power on the Board: the “full power to legislate and make all needful rules and regulations in relation to Free Public Schools.” 1868 N.C. Const. art. IX, § 9, attached as Appx. 21. The 1868 Constitution further stated that “all acts, rules and regulations of said Board may be altered, amended or repealed by the General Assembly . . . , and when so altered, amended or repealed, they shall not be re-enacted by the Board.” *Id.*

The 1868 Constitution also created the SPI as a member of the Board, along with other executive-branch officials. *Id.* § 7 (“The Governor, Lieutenant-Governor, Secretary of State, Treasurer, Auditor, Superintendent of Public Works, Superintendent of Public Instruction and Attorney General, shall constitute a State Board of Education.”). In addition, the 1868 Constitution stated that the SPI “shall be Secretary[] of the Board of Education.” *Id.* § 8.

The 1868 Constitution did not, however, confer any powers or duties on the SPI, other than the duty of serving as the “Secretary of the Board[.]” *Id.*

b. The 1942 Amendment

In 1931, the General Assembly established a constitutional commission to study the potential for various constitutional amendments. *Report of the North*

Carolina Constitutional Commission, as reprinted in 11 N.C. L. Rev. 5 (1932). By 1942, an amendment was placed on the ballot and ratified by the voters.⁷

The amendment began by including a sentence expressly preserving the Board's power as it existed in 1868: that the Board "shall succeed to all the powers . . . of the State Board of Education as heretofore constituted." N.C. Const. of 1868 (amended 1942) art. IX, § 9.⁸ To anchor these powers in the Board alone, the amendment further mandated that "[t]he general supervision and administration of the free public school system, and of the educational funds provided for the support thereof, shall . . . be vested in a State Board of Education." *Id.* § 8.

Notably, however, the 1942 amendment also gave the SPI a constitutional power that seemed to overlap with the Board's constitutional power of "general supervision . . . of the free public school system." *Id.* In addition to stating that the SPI "shall be secretary of the board," as in the 1868 Constitution, the 1942 amendment added that the SPI "shall have general supervision of the public schools." *Id.*

Thus, sections 8 and 9 of the 1942 amendment stated in pertinent part:

Sec. 8. State Board of Education. The general supervision and administration of the free public school system, and of the educational funds provided for the support thereof, shall, from and after the first

⁷ The intent of the framers leading up to the 1942 amendment is discussed exhaustively in the Board's brief in the companion case to this appeal. See No. 110PA16-2, Bd. Br. at 21-28. For brevity, that discussion is incorporated here by reference.

⁸ The amendment was enacted by Act of March 13, 1941, ch. 151, sec. 1-3, 1941 N.C. Sess. Laws 240-41, attached as Appx. 24-27.

day of April, one thousand nine hundred and forty-three, be vested in a State board of Education to consist of the Lieutenant Governor, State Treasurer, the Superintendent of Public Instruction, and one member from each Congressional District to be appointed by the Governor. The State Superintendent of Public Instruction shall have general supervision of the public schools and shall be secretary of the board.

Sec. 9. Powers and Duties of the Board. The State Board of Education shall succeed to all the powers and trusts of the President and Directors of the Literary Fund of North Carolina and the State Board of Education as heretofore constituted. The State Board of Education shall have power to divide the State into a convenient number of school districts; to regulate the grade, salary and qualifications of teachers; to provide for the selection and adoption of the text-books to be used in the public schools; to apportion and equalize the public school funds over the State; and generally to supervise and administer the free public school system of the State and make all needful rules and regulations in relation thereto. All the powers enumerated in this section shall be exercised in conformity with this Constitution and subject to such laws as may be enacted from time to time by the General Assembly.

Id. §§ 8-9.

As this comparison shows, the 1942 amendment appeared to create some overlap between the Board's "general supervision" power and the SPI's "general supervision" power:

Board's powers under § 8 of 1942 amendment	SPI's power under § 8 of 1942 amendment
"The general supervision and administration of the free public school system, and of the educational funds provided for the support thereof, shall . . . be vested in a State Board of Education."	"The State Superintendent of Public Instruction shall have general supervision of the public schools and shall be secretary of the board."

While the Board's "general supervision" power extended to the "public school system," and not just the "public schools," like it did for the SPI, this nevertheless created a potential ambiguity involving the Board's authority and the SPI's authority. Less than two years after this ambiguity was created, however, the people of North Carolina resolved that ambiguity with another constitutional amendment.

c. The 1944 amendment

Less than two years after the 1942 amendment was adopted, as if immediately recognizing the ambiguity described above, the framers proposed—and the voters ratified—another amendment.

Critically, the 1944 amendment *eliminated* the SPI's briefly held power of "general supervision of the public schools." N.C. Const. of 1868 (amended 1944) art. IX, § 9.⁹ In its place, the 1944 amendment stated that "[t]he State Superintendent of Public Instruction shall be the administrative head of the public school system."

Id. Thus, in pertinent part, the 1944 amendment made the following revision:

Sec. 8. State Board of Education. The general supervision and administration of the free public school system, and of the educational funds provided for the support thereof, shall . . . be vested in a State board of Education to consist of the Lieutenant Governor, State Treasurer, the Superintendent of Public Instruction, and ten members to be appointed by the Governor, subject to confirmation by the General Assembly in joint session. . . . The State Superintendent of Public Instruction shall ~~have general supervision of the public schools~~ be the administrative head of the public school system and shall be secretary of the board.

⁹ The amendment was enacted by Act of March 5, 1943, ch. 468, sec. 1, 1943 N.C. Sess. Laws 527, attached as Appx. 28-29.

Id. § 8.

Meanwhile, the framers of the 1944 amendment left the Board's powers undisturbed, such that "[t]he general supervision and administration of the free public school system, and of the educational funds provided for the support thereof, shall . . . be vested in a State Board of Education." *Id.*

Thus, the 1944 amendment reaffirmed the Board's constitutional powers, and it dispelled any notion that the SPI could possess the power of "general supervision of the public schools," as the SPI had briefly possessed from 1942 to 1944. Instead, pursuant to the 1944 amendment, the SPI was "the administrative head of the public school system," and an officer "of the Board"—the thirteen-member board in which "[t]he general supervision and administration of the free public school system, and of the educational funds provided for the support thereof, shall . . . be vested." *Id.* (emphasis added).

d. The 1971 Constitution

In 1969, the General Assembly called for the existing 1868 Constitution to be modernized. Act of July 2, 1969, ch. 1258, sec. 1, 1969 N.C. Sess. Laws 1461. The study commission charged with making these revisions condensed the text describing the Board's constitutional "[p]owers and duties" into the abbreviated language now found in Article IX, Section 5:

The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.

N.C. Const. art. IX, § 5.

The study commission took great care to ensure that these stylistic revisions would not be misunderstood as altering the Board's powers as they existed following the 1942 and 1944 amendments, which, in turn, had carried forward the full scope of the Board's powers from the 1868 Constitution. The study commission specifically cautioned that the new stylistic revisions simply "restat[e] in much abbreviated form, the duties of the State Board of Education, but *without any intention that its authority be reduced.*" *Report of the State Constitutional Study Commission* at 86-87 (1968) (hereinafter "the 1968 Report") (emphasis added), attached as Appx. 30-32.

Thus, the commission made clear that the 1971 Constitution would preserve the Board's constitutional power as it existed at the time of the last amendment to the Board's powers in 1942, which was left untouched in 1944.

By contrast, the framers of the 1971 Constitution made changes to the SPI's constitutional role. The commission deleted the reference to the SPI's 1944 role as "the administrative head of the public school system," and clarified that the SPI is the "secretary and chief administrative officer of the [Board]." N.C. Const. art. IX, § 4. The commission also took away the SPI's vote, reducing the SPI to a non-voting officer of the Board. *Id.*

The commission specifically explained that these changes were intended to "modif[y] the State Board of Education slightly by eliminating the Superintendent of Public Instruction as a voting member of the Board while retaining him as the Board's secretary and chief administrative officer." 1968 Report at 87. Therefore,

as the commission explained, “[a] potential conflict of authority between the Superintendent and the Board is eliminated by making clear that he is the administrative officer of the Board,” such that the Board—and *not* the SPI—“is to administer the public schools [under Article IX, Section 5].” *Id.* (emphasis added).

The people of North Carolina ratified that amendment in 1971. Thus, following the 1944 amendment’s elimination of the SPI’s briefly held “supervision” power, the 1971 Constitution further clarified that the SPI’s role was *not* to “administer the public schools,” *id.* because this constitutional power was vested in the Board. Instead, as of 1971, the SPI’s role was to serve as a non-voting, “secretary and chief administrative officer of the Board.” N.C. Const. art. IX, § 4(2) (emphasis added).

Since then, there have been no constitutional amendments relevant to this appeal.

2. The Transfer Legislation defies the intent of the framers.

On its face, the Transfer Legislation defies the framers’ intent in at least two ways:

First and foremost, as described above, the framers intended that “[t]he general supervision and administration of the free public school system, and of the educational funds provided for the support thereof, *shall . . . be vested in a State Board of Education.*” N.C. Const. of 1868 (amended 1944) art. IX, § 8 (emphasis added). By attempting to *divest* the Board of those constitutional powers without a constitutional amendment, the Transfer Legislation plainly defies the framers’ intent.

Second, the Transfer Legislation clashes with the framers' intent to confine the SPI to a very narrow role. As discussed above, the framers of the 1944 amendment *eliminated* the SPI's briefly held power of "general supervision of the public schools," thus dispelling any notion that the SPI could possess the Board's powers. *See supra* at 23-29. Then, in 1971, the framers clarified that the SPI's constitutional role was *not* to "administer the public schools," because this was a constitutional power vested in the Board. *See supra* at 27-29.

Yet the Transfer Legislation attempts to *statutorily reverse* these constitutional amendments. On its face, the Transfer Legislation attempts to *give* the SPI the same power that the 1944 constitutional amendment expressly *eliminated*: the power to "supervis[e] . . . the public schools." Indeed, the Transfer Legislation goes even further, giving the SPI the power to "supervise" the entire "public school *system*." N.C. Sess. Law 2016-126 § 4 (emphasis added).

Likewise, the Transfer Legislation attempts to give the SPI the power to "administer the public schools," to the exclusion of the Board—precisely the opposite of the framers' intent in the 1971 Constitution. *See supra* at 27-29.

This Court has explained that the Constitution "is not so easily amended" because its protections are "intended to be permanent." *Rodwell v. Rowland*, 137 N.C. 617, 636, 50 S.E. 319, 326 (1905). As the points above show, however, the General Assembly apparently believed that in less than 48 hours, it could reverse two constitutional amendments simply by passing a law.

In each of these ways, the Transfer Legislation defies the framer's intent.

C. Defendants' interpretation of "subject to laws enacted by the General Assembly" would violate the basic constitutional principle that constitutional powers cannot be statutorily reassigned.

Finally, there is another reason that the Court should reject Defendants' claim that the Board's constitutional power "is whatever the General Assembly says it is" (T p 100): It would violate the basic constitutional principle that constitutional powers cannot be statutorily reassigned.

As described above, and as this Court recognized in *Guthrie v. Taylor*, 279 N.C. 703, 185 S.E.2d 193 (1971), Article IX, Section 5 is "a *direct delegation*" of constitutional power to the Board. *See Guthrie*, 279 N.C. at 710, 712, 185 S.E.2d at 200 (explaining that Article IX, Section 5 is "a *direct delegation* by the people, themselves, in the Constitution of the State, of [a] portion of their power," and, therefore, "we look only to the Constitution to determine what power has been delegated") (emphasis added). Thus, as the framers intended, "[t]he general supervision and administration of the free public school system, and of the educational funds provided for the support thereof, *shall . . . be vested in a State Board of Education.*" N.C. Const. of 1868 (amended 1944) art. IX, § 8 (emphasis added).

Defendants' suggested interpretation of "subject to laws enacted by the General Assembly," however, would allow the General Assembly to statutorily reassign the Board's powers to the SPI, thereby empowering the SPI—and not the Board—to "supervise and administer the free public school system and the educational funds provided for its support." N.C. Const. art. IX, § 5.

Defendants' suggested interpretation is at odds with a bedrock principle of constitutional law that this Court has enforced for nearly 150 years: that when a constitution expressly commits certain powers and duties to an entity, those powers and duties cannot be reassigned to a different entity without a constitutional amendment. See, e.g., *State v. Camacho*, 329 N.C. 589, 594, 406 S.E.2d 868, 871 (1991) (holding that when the North Carolina Constitution expressly confers powers and duties on a constitutional officer, any "encroachment" by the other branches "invade[s] the province of an independent constitutional officer" and violates the North Carolina Constitution); *Mial v. Ellington*, 134 N.C. 131, 162, 46 S.E. 961, 971 (1903) ("[I]n respect to offices created and provided for by the Constitution, the people in convention assembled alone can alter, change their tenure, duties or emoluments, or abolish them."); *Wilmington, C. & A. R.R. Co. v. Bd. of Comm'rs*, 72 N.C. 10, 13 (1875) (holding that the General Assembly could not legislatively transfer local officers' constitutional powers to Governor, Auditor and Treasurer because "[s]uch power is by the Constitution vested in the [local officers] alone, and cannot be taken away from them"); *King v. Hunter*, 65 N.C. 603, 612 (1871) (holding that the General Assembly could not legislatively transfer sheriff's constitutional powers).

While this Court has not had occasion to apply this principle in the context of Article IX, Section 5, state supreme courts have "uniformly denounced" the argument that Defendants make here: that constitutional phrases like "subject to laws"—for example, "under such regulations as may be prescribed by law," "as may

be assigned by law,” or “as prescribed by law”—mean that the legislature can statutorily reassign constitutional powers.¹⁰ *Hudson v. Kelly*, 263 P.2d 362, 368 (Ariz. 1953) (noting that these arguments have “uniformly been denounced by courts of last resort”); *see also, e.g., Powers v. State*, 318 P.3d 300 (Wyo. 2014); *State ex rel. Discover Fin. Servs. v. Nibert*, 744 S.E.2d 625, 644-45 (W. Va. 2013); *State v. Hagerty*, 580 N.W.2d 139, 147 (N.D. 1998); *Public Ed. v. Adm. Code Comm.*, 1992 Mont. Dist. LEXIS 204 (D. Mont. Mar. 1992); *West Va. Bd. of Educ. v. Hechler*, 376 S.E.2d 839 (W. Va. 1988); *Tucker v. State*, 35 N.E.2d 270, 292 (Ind. 1941); *Wright v. Callahan*, 99 P.2d 961, 966 (Idaho 1940); *State ex rel. Black v. State Bd. of Educ.*, 196 P. 201, 204-05 (Idaho 1921); *Ex parte Corliss*, 114 N.W. 962, 965 (N.D. 1907).

Most notable among these authorities is the decision in *Powers*, 318 P.3d 300, which reached this conclusion under circumstances similar to those here. The Wyoming Constitution states that “[t]he general supervision of the public schools shall be entrusted to the state superintendent of public instruction, whose powers

¹⁰ Neither of this Court’s Article IX, Section 5 cases are instructive on this issue. *Guthrie* held that if the Board enacts a rule, the legislature may reject that particular rule by revising or repealing it. 279 N.C. at 710, 185 S.E.2d at 198. *State v. Whittle Commc’ns*, 328 N.C. 456, 402 S.E.2d 556 (1991), held that if the legislature preempts the Board by enacting a law on a “specific” public education matter, the Board cannot overrule the law by enacting a contrary rule. As the Court of Appeals in the companion case noted, however, this Court has never considered—much less sustained—an attempt by the General Assembly to statutorily reassign the Board’s constitutional powers. *See North Carolina State Bd. of Educ. v. State*, No. COA15-1229, Slip op. at 18 (N.C. Ct. App. Sept. 19, 2017) (“No North Carolina appellate court has previously decided the issue presented in this appeal.”); *see id.* at 20 (“[T]he issue before us exceeds the parameters of *Whittle*.”).

and duties shall be prescribed by law.”¹¹ *Id.* at 304 (quoting Wyo. Const. art. VII, § 14). In 2013, however, relying on the second part of that constitutional phrase, “whose powers and duties shall be prescribed by law,” the Wyoming legislature attempted to statutorily reassign the state superintendent’s constitutional powers to the Director of the Wyoming Department of Education. *Id.*

For years, Wyoming’s statutes had served as a legislative recognition of the state superintendent’s constitutional power. *Id.* at 302 (quoting Wyo. Stat. Ann. §§ 21-2-201, 202). Similar to the General Assembly’s behavior in this case, however, the Wyoming legislature attempted to accomplish its desired power transfer by amending those statutes to “substitute ‘director’ for ‘state superintendent’ in approximately 100 places.” *Id.* Then, like the Defendants in this case, when that transfer was challenged, the defendants “emphasize[d] the second clause” of the constitutional phrase (i.e., “whose powers and duties shall be prescribed by law”). *Id.* at 304-05. Also like the Defendants in this case, the defendants “contend[ed] the legislature has the ultimate authority to ‘dictate’ the powers and duties of the Superintendent, and that the power of the legislature to ‘prescribe by law’ is unrestricted.” *Id.* at 305.

The Wyoming Supreme Court rejected the attempted power transfer. The Court explained that “[w]hile the legislature can prescribe powers and duties of the Superintendent, it cannot eliminate or transfer powers and duties to such an extent

¹¹ While the Wyoming Constitution gives this “general supervision” power to Wyoming’s state superintendent of public instruction rather than to a state board of education, as in the North Carolina Constitution, the same principles apply here.

that the Superintendent no longer maintains the power of ‘general supervision of the public schools’”—in other words, the powers expressly conferred by the state constitution. *Id.* at 313.

The Court further determined that certain remaining “limited and piecemeal” powers left to the state superintendent did not comport with the constitutional mandate that the state superintendent have the power of “general supervision” of the public schools. *Id.* at 321. Thus, the Wyoming Constitution’s language—“whose powers and duties shall be prescribed by law”—did not provide the legislature with “unlimited authority” to delineate the state superintendent’s constitutional powers and duties, as the defendants had asserted. *Id.* at 323.

As these authorities confirm, Defendants’ suggested interpretation here is untenable for at least three reasons.

First, if “subject to laws enacted by the General Assembly” means that constitutional powers can be reassigned by statute, then there is really no reason to constitutionalize those powers in the first place. After all, the default position—in the absence of a state constitution—is that a legislature can enact whatever laws it wants. Thus, it makes no sense to interpret the phrase “subject to laws enacted by the General Assembly” as some kind of “codification” of that power. *See State v. Lewis*, 142 N.C. 626, 631, 55 S.E. 600, 602 (1906) (noting that state constitutions must be construed “as *limitations* upon the power of the State Legislature”) (emphasis added). This is especially true when that phrase appears in an

education-specific constitutional provision that expressly commits certain constitutional powers to a constitutional body *other* than the legislature.

Second, Defendants' interpretation is dangerous because it has no limiting principle. If Defendants' interpretation were accepted, the General Assembly could decide that any entity or individual of its choice—even private individuals—could exercise the constitutional power to “supervise and administer the free public school system and the educational funds provided for its support.” N.C. Const. art. IX, § 5. If the General Assembly decided, for example, that the Rockingham County Clerk of Superior Court ought to supervise and administer the public school system, then under Defendants' suggested interpretation, it could statutorily reassign the Board's powers to the Rockingham County Clerk of Superior Court, all without a constitutional amendment.¹²

That is precisely the concern that this court articulated nearly 150 years ago when it first applied the bedrock principle of law described above: that “[w]ith as much propriety every other office in the State may be cut up, and those who have

¹² There is no question that the Transfer Legislation was motivated purely by politics. At the TRO hearing, the following exchange occurred (R Supp p 36):

[THE COURT]: When did [any constitutional ambiguity] arise? I wonder . . . when the ambiguity arose. Could it have been late on the evening of November the 8th or 9th [Election Night 2016] or something like that? Is that when the ambiguity arose?

[THE STATE'S COUNSEL]: It's possible, Your Honor.

been put into the office by the people may be starved out, and irresponsible persons put in.” *King*, 65 N.C. at 612.¹³

In this same vein, Defendants’ suggested interpretation could endanger the longstanding constitutional roles of executive branch officials. Under Article III, Section 7, the Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance are constitutional officers whose “respective duties shall be prescribed by law.” N.C. Const. art. III, § 7(2). If the phrase “subject to laws” were interpreted to mean that the General Assembly can statutorily reassign the Board’s constitutional power, the General Assembly might be tempted to rely on the phrase “prescribed by law” to reassign the constitutional roles of executive branch officials who do not share the General Assembly’s political priorities—for example, transferring the Secretary of State’s constitutional role to a more politically aligned individual, or perhaps eliminating her constitutional office altogether.

Finally, Defendants’ suggested interpretation of “subject to laws enacted by the General Assembly” runs headlong into the State’s own concessions. While the State appeared to join in—or at least did not disavow—the SPI’s assertion at oral

¹³ Virtually every other state supreme court has issued similar warnings. *See, e.g., State ex rel. Banks v. Drummond*, 385 P.3d 769, 781-82 (Wash. 2016) (en banc) (“If . . . constitutional offices can be stripped of a *portion* of the inherent functions thereof, they can be stripped of *all* such functions . . . and the will of the framers of the constitution thereby thwarted.”); *Corliss*, 114 N.W. at 965 (observing that if legislature could assign duties from County Sheriff and State’s Attorney to another entity, nothing could stop it from creating its own Governor or Attorney General).

argument that the Board's power "is whatever the General Assembly says it is" (T p 100), the State's earlier concessions in its briefs undermine that claim:

SPI's Assertion	State's Brief
The Board's power "is whatever the General Assembly says it is." (T p 100).	<p>"Naturally, the State does not contend that the General Assembly maintains unbridled authority to enact laws pertaining to the role of the Board." (R Supp p 293).</p> <p>The State "agrees" with the Board that "[the Board's] constitutionally accorded authority cannot be usurped by legislation." (R Supp p 288).</p>

Those concessions offer a strong indication of what the outcome of this appeal should be. *See, e.g., Dickson v. Rucho*, 366 N.C. 332, 342, 737 S.E.2d 362, 370 (2013) (interpreting statute in light of opposing party's concessions).

In sum, Defendants' suggested interpretation is at odds with this Court's prior decisions, has been "uniformly denounced" by other states, and is inconsistent with the State's own concessions. Perhaps most importantly, Defendants' suggested interpretation, if accepted, would stand for a dangerous precedent: that the General Assembly can copy and paste constitutional text into a statute, remove constitutional entities or officers, replace them with individuals who better suit its political agenda, and effectively remake state government in its image.

For these additional reasons, the Court should reverse.

D. Defendants' other defenses to the Transfer Legislation are without merit.

1. Defendants cannot justify the Transfer Legislation by pointing to more legislation.

Before the three-judge panel, Defendants argued that the Transfer Legislation should be sustained because the General Assembly has passed a number of statutes over the years that have made "modifications" to the powers and duties of the State Board. (R Supp p 119, SPT's Br. at 2). This argument fails for at least three reasons.

First, it is a basic tenet of constitutional law that a legislature cannot defend the constitutionality of a statute by pointing to more of its own statutes. *See, e.g., INS v. Chadha*, 462 U.S. 919, 967-75 (1983) (striking down legislative veto as unconstitutional despite its inclusion in hundreds of federal statutes dating back half a century). In essence, Defendants' argument reduces to a "we've done it before" defense, which has no place in constitutional litigation. *See, e.g., New York v. United States*, 505 U.S. 144, 182 (1992) (striking down unconstitutional appropriation of another branch's power, even when both branches had historically acquiesced).

Second, while Defendants contended before the three-judge panel that the Transfer Legislation is merely an amendment to legislation enacted in 1995, that contention rings hollow. The 1995 legislation simply confirmed the Board's *constitutionally conferred* powers, and served as a recognition by the General Assembly (albeit an unnecessary one) of what the North Carolina Constitution had already provided since 1868. Just as the North Carolina Constitution has always

made clear that the Board directs the SPI, and not the other way around, so did the 1995 legislation. *Compare* N.C. Session Law 1995-72 s. 1 (“[T]he Superintendent manages on a day-to-day basis the administration of the free public school system, *subject to the direction, control, and approval of the State Board.*”) (emphasis added), *with* N.C. Const. art. IX, § 5 (stating that “[t]he State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support”), *and id.* § 4(2) (“The Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education.”) (emphasis added).

It follows, then, that the General Assembly cannot use the 1995 legislation (or any other legislation) as a vehicle for transferring the Board’s constitutional powers to the SPI simply by replacing the words “Board of Education” with “Superintendent of Public Instruction.” *See Powers*, 318 P.3d at 304 (rejecting similar attempt to reassign constitutional powers). To accept this notion would be to allow the General Assembly to violate the North Carolina Constitution under the guise of “merely amending prior legislation.”¹⁴

Finally, none of the statutes that Defendants cited before the three-judge panel shed any light on the constitutionality of the Transfer Legislation for another important reason: None of these statutes attempted to strip the Board of its

¹⁴ This ruse is no different than if the General Assembly enacted a statute—albeit an unnecessary one—“codifying” the Governor’s constitutional veto power, then later revised that statute to strip the Governor of the veto power and transfer that power to the Commissioner of Agriculture. Such a “statutory amendment” could not deprive the Governor of the constitutionally conferred veto power.

constitutional powers and transfer those powers to someone else. Rather, the Transfer Legislation marks the only time the General Assembly has attempted to do so in the nearly 150-year history of the Board. Thus, these older statutes are simply irrelevant to the issue of first impression presented here.

For each of these reasons, Defendants cannot justify the Transfer Legislation by pointing to more legislation.

2. The Transfer Legislation is not a “codification” of the SPI’s limited constitutional role.

Before the three-judge panel, Defendants argued that the Transfer Legislation merely “codifies” the SPI’s constitutional role. As support for this contention, Defendants exaggerated the SPI’s role in ways that lack support in the constitutional text.

For instance, the State referred to the SPI as a constitutional “executive,” a “chief operating officer,” and even the Board’s “chief executive,” who enjoys “executive discretion.” (R Supp pp 66-70). Not a word of the constitutional text, however, mentions any of these made-up titles or fictional powers.

Instead, as discussed above, the North Carolina Constitution is clear about the SPI’s narrow constitutional role as the “secretary and chief administrative officer of the Board.” N.C. Const. art. IX, § 4(2) (emphasis added). As discussed above, the framers intentionally clarified this role to conclusively resolve a “potential conflict of authority.” *See supra* at 27-29. The Transfer Legislation does nothing more than attempt to *reopen* that “potential conflict of authority” that the framers sought to conclusively resolve.

For these reasons, Defendants' argument that the Transfer Legislation is a "codification" of the SPI's constitutional role is mistaken.

3. The SPI's severability argument is without merit.

Before the three-judge panel, the SPI argued that certain portions of the Transfer Legislation could, in theory, be severable. However, the SPI repeatedly declined to suggest which provisions might be severable, and if so, how or why. Meanwhile, the State did not even attempt a severability argument.

In any event, a severability analysis has no application here.

Session Law 2016-126 is a single piece of legislation with 43 separate sections, some of which include the Transfer Legislation. *See supra* at 8-12. If the Board were challenging Session Law 2016-126 in its entirety, then perhaps the SPI's severability argument would be appropriate. For example, the Court could invalidate the Transfer Legislation, but leave undisturbed the remaining portions of Session Law 2016-126 that were not part of the Transfer Legislation.

As described above, however, the Board did not challenge the entire session law. Instead, the Board intentionally challenged no more of Session Law 2016-126 than necessary, challenging only those provisions of Session Law 2016-126 in which the General Assembly attempted to either facially transfer the Board's constitutional powers to the SPI or implement that transfer. (R pp 56-60).

The Board identified those provisions of Session Law 2016-126 in the complaint at a granular level, listing each of them individually, setting forth the statutes that they attempted to amend, and categorizing which of the Board's constitutional powers and duties they sought to transfer—an effort that far exceeds

what is required of plaintiffs. *Id.* Then, in its briefs to the three-judge panel, the Board repeated this delineation, referring to and incorporating those portions of the complaint that targeted certain provisions of Session Law 2016-126 with precision. (R Supp pp 9-10).

Put simply, the Board used a scalpel, not a sledgehammer, to challenge the law. As a result, the remaining portions of Session Law 2016-126—namely, Sections 13, 18-23, 26-27, and 31-43—are not at issue in this litigation.

Given the nature of the Board's narrow challenge, any attempt by the SPI at a severability defense is misguided. This is especially true given that, in the face of the Board's specific, targeted challenge, the SPI has not offered a reason why any of the challenged provisions could or should be treated differently from the rest, or why the provisions that facially transfer the Board's powers are somehow unconnected from the provisions that implement that transfer.

Regardless, this Court has explained that when the State attempts to mitigate a constitutional challenge by clinging to a boilerplate severability clause, the Court must strike down the law as a whole if it is "a carefully meshed system" of legislation, "the cornerstones of which" are unconstitutional. *Flippin v. Jarrell*, 301 N.C. 108, 119, 270 S.E.2d 482, 489 (1980); *see also, e.g., G.I. Surplus Store, Inc. v. Hunter*, 257 N.C. 206, 214, 125 S.E.2d 764, 769-70 (1962).

Here, the constitutional flaws in the "cornerstones" of the Transfer Legislation are so broad and sweeping that, if upheld, they would effectively

subsume all of the implementing provisions, rendering them superfluous.¹⁵ Conversely, if the Court were to strike down only the cornerstones of the Transfer Legislation and leave the implementing provisions in place, the statute would make no sense and, worse, would result in utter dysfunction. After all, if the Board has the constitutional power to direct the SPI and determine what authority it chooses to *delegate* to the SPI, that power cannot exist alongside statutory provisions dictating what the SPI *shall administer* in the absence of Board input, direction, and approval.¹⁶ The Transfer Legislation must, therefore, “fall as a whole.” *Flippin*, 301 N.C. at 118, 270 S.E.2d at 488-89.

For these reasons, no severability analysis is appropriate. Moreover, even if the Court were to apply a severability analysis, the Transfer Legislation—both the “cornerstones” of the law and the “carefully meshed” provisions that implement them—would fall as a whole. Accordingly, the SPI’s severability argument must fail.

¹⁵ Those “cornerstones” of the Transfer Legislation are in Section 3 (amending N.C.G.S. § 115C-19) and Section 4 (amending N.C.G.S. §§ 115C-21(a)(1), 115C-21(a)(5), and 115C-21(b)(1b)). *See supra* at 8-12. The remaining provisions of the Transfer Legislation merely implement those “cornerstones,” as noted above. *See id.*

¹⁶ *See, e.g.*, N.C. Sess. Law 2016-126 § 4 (amending N.C.G.S. § 115C-21(a)(1)) (mandating that the Board’s staff “shall be under the control and management of the [SPI]”); *Id.* (creating N.C.G.S. § 115C-21(a)(9)) (“It shall be the duty of the [SPI] . . . [t]o have under his or her direction and control all matters relating to the provision of staff services . . .”); *Id.* § 6 (amending N.C.G.S. § 115C-410) (“[T]he [SPI] is authorized to create and administer such special funds . . .”); *Id.* § 10 (amending N.C.G.S. § 143A-44.1) (“The head of the Department of Public Instruction is the . . . [SPI].”).

* * *

In sum, the Transfer Legislation represents a brazen attempt by the General Assembly to transfer constitutional powers without a constitutional amendment. The Transfer Legislation copies and pastes constitutional powers into a statute, then replaces the people's constitutionally designated body with an individual who shares the General Assembly's political priorities:

Article IX, Section 5 of the North Carolina Constitution	N.C. Sess. Law 2016-126 § 4
It shall be the "dut[y]" of " <i>the State Board of Education</i> . . . [to] supervise and administer the free public school system[.]"	"It shall be the duty of <i>the Superintendent of Public Instruction</i> . . . to have under his or her direction and control, all matters relating to the direct supervision and administration of the public school system."

The three-judge panel's conclusion that this legislation "does not transfer the Board's powers" cannot be sustained, nor can Defendants' assertion that the Board's constitutional power "is whatever the General Assembly says it is." (T p 100).

The only way to give effect to the plain language of the Constitution, faithfully implement the framers' intent, and protect against future legislative transfers of constitutional powers is for the Court to hold that the Transfer Legislation is unconstitutional.

CONCLUSION

The Board respectfully requests that the three-judge panel's decision be reversed.

Respectfully submitted the 29th day of December, 2017.

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This the 29th day of December, 2017.

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APPENDIX

N.C. Sess. Law 2016-126	Appx. 1
1868 N.C. Const. art. IX	Appx. 21
1941 N.C. Sess. Laws 240-41	Appx. 24
1943 N.C. Sess. Laws 527.....	Appx. 28
<i>Report of the State Constitutional Study Commission</i> (1968)	Appx. 30

GENERAL ASSEMBLY OF NORTH CAROLINA
FOURTH EXTRA SESSION 2016

SESSION LAW 2016-126
HOUSE BILL 17

AN ACT TO CLARIFY THE SUPERINTENDENT OF PUBLIC INSTRUCTION'S ROLE AS THE ADMINISTRATIVE HEAD OF THE DEPARTMENT OF PUBLIC INSTRUCTION, TO CHANGE THE APPOINTMENTS PROCESS FOR THE BOARDS OF TRUSTEES FOR THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA, TO MODIFY THE APPOINTMENT OF HEADS OF PRINCIPAL STATE DEPARTMENTS, AND TO ESTABLISH TASK FORCE FOR SAFER SCHOOLS.

The General Assembly of North Carolina enacts:

PART I. CLARIFY ROLES/DPI/SBE

SECTION 1. G.S. 115C-11 reads as rewritten:

"§ 115C-11. Organization and internal procedures of Board.

...

(a1) Student advisors. – The ~~Governor~~Superintendent of Public Instruction is hereby authorized to appoint two high school students who are enrolled in the public schools of North Carolina as advisors to the State Board of Education. The student advisors shall participate in State Board deliberations in an advisory capacity only. The State Board may, in its discretion, exclude the student advisors from executive sessions.

~~The Governor shall make initial appointments of student advisors to the State Board as follows:~~

- (1) ~~One high school junior shall be appointed for a two year term beginning September 1, 1986, and expiring June 14, 1988; and~~
- (2) ~~One high school senior shall be appointed for a one year term beginning September 1, 1986, and expiring June 14, 1987. When an initial or subsequent term expires, the Governor~~The Superintendent of Public Instruction shall appoint a stagger the appointments of the two student advisors so that a high school junior ~~for is~~ serving in the first year of a two-year term and a high school senior is serving in the second year of a two-year term simultaneously. The appointment of a high school junior shall be made beginning June 15 of ~~that~~ each year. If a student advisor is no longer enrolled in the public schools of North Carolina or if a vacancy otherwise occurs, the ~~Governor~~Superintendent of Public Instruction shall appoint a student advisor for the remainder of the unexpired term.

Student advisors shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

...

(a3) Superintendent Advisor. – The ~~Governor~~Superintendent of Public Instruction shall appoint a superintendent of a local school administrative unit as an advisor to the State Board of Education. The superintendent advisor shall serve for a term of one year. The superintendent advisor shall participate in State Board deliberations and committee meetings in an advisory



capacity only. The State Board may, in its discretion, exclude the superintendent advisor from executive sessions.

In the event that a superintendent advisor ceases to be a superintendent in a local school administrative unit, the position of superintendent advisor shall be deemed vacant. In the event that a vacancy occurs in the position for whatever reason, the ~~Governor~~ Superintendent of Public Instruction shall appoint a superintendent advisor for the remainder of the unexpired term. The superintendent advisor to the State Board shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

...
(i) Administrative Assistance. – The Superintendent of Public Instruction shall provide technical assistance and administrative assistance, including all personnel except as otherwise provided in subsection (j) of this section, to the State Board of Education through the Department of Public Instruction.

(j) Certain Personnel Appointed by the State Board. – The State Board may appoint only the following personnel positions to support the operations of the State Board of Education through the Department of Public Instruction:

	<u>Position number</u>	<u>Title</u>
(1)	<u>65023576</u>	<u>Attorney I.</u>
(2)	<u>60009384</u>	<u>Attorney II.</u>
(3)	<u>65003194</u>	<u>Paralegal II.</u>
(4)	<u>60095070</u>	<u>Administrative Assistant I."</u>

SECTION 2. G.S. 115C-12 reads as rewritten:

"§ 115C-12. Powers and duties of the Board generally.

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State Board of Education shall establish ~~policy~~ all needed rules and regulations for the system of free public schools, subject to laws enacted by the General Assembly. In accordance with Sections 7 and 8 of Article III of the North Carolina Constitution, the Superintendent of Public Instruction, as an elected officer and Council of State member, shall administer all needed rules and regulations adopted by the State Board of Education through the Department of Public Instruction. The powers and duties of the State Board of Education are defined as follows:

...."

SECTION 3. G.S. 115C-19 reads as rewritten:

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

As provided in Article IX, Sec. 4(2) of the North Carolina Constitution, the Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education. ~~As secretary and chief administrative officer of the State Board of Education, the Superintendent manages on a day to day basis the administration of the free public school system, subject to the direction, control, and approval of the State Board. Subject to the direction, control, and approval of the State Board of Education, the Superintendent of Public Instruction~~ As provided in Sections 7 and 8 of Article III of the North Carolina Constitution, the Superintendent of Public Instruction shall be an elected officer and Council of State member and shall carry out the duties prescribed under G.S. 115C-21-G.S. 115C-21 as the administrative head of the Department of Public Instruction. The Superintendent of Public Instruction shall administer all needed rules and regulations adopted by the State Board of Education through the Department of Public Instruction."

SECTION 4. G.S. 115C-21 reads as rewritten:

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

(a) Administrative Duties. – ~~Subject to the direction, control, and approval of the State Board of Education, it~~ It shall be the duty of the Superintendent of Public Instruction:

- (1) To organize and establish a Department of Public Instruction which shall include ~~such~~ divisions and departments as the State Board considers ~~necessary~~ for supervision and administration of the public school ~~system-system~~, to administer the funds appropriated for the operation of the Department of Public Instruction, in accordance with all needed rules and regulations adopted by the State Board of Education, and to enter into contracts for the operations of the Department of Public Instruction. All appointments of administrative and supervisory personnel to the staff of the Department of Public Instruction are subject to the approval of the State Board of Education, ~~which~~ Instruction and the State Board of Education, except for certain personnel appointed by the State Board of Education as provided in G.S. 115C-11(j), shall be under the control and management of the Superintendent of Public Instruction who may terminate these appointments for cause in conformity with Chapter 126 of the General Statutes, the North Carolina Human Resources Act.
 - (2) To keep the public informed as to the problems and needs of the public schools by constant contact with all school administrators and teachers, by personal appearance at public gatherings, and by information furnished to the press of the State.
 - (3) To report biennially to the Governor 30 days prior to each regular session of the General Assembly, such report to include information and statistics of the public schools, with recommendations for their improvement and for changes in the school law.
 - (4) To have printed and distributed such educational bulletins as are necessary for the professional improvement of teachers and for the cultivation of public sentiment for public education, and to have printed all forms necessary and proper for the administration of the Department of Public Instruction.
 - (5) To ~~manage~~ have under his or her direction and control, all these matters relating to the direct supervision and administration of the public school system that the State Board delegates to the Superintendent of Public Instruction-system.
 - (6) To create ~~and administer~~ special ~~fundfunds~~ within the Department of Public Instruction to manage funds received as grants from nongovernmental sources in support of public education. ~~Effective July 1, 1995, this special fund is transferred to the State Board of Education and shall be administered by the State Board education in accordance with G.S. 115C-410.~~
 - (7) Repealed by Session Laws 1995, c. 72, s. 2.
 - (8) To administer, through the Department of Public Instruction, all needed rules and regulations established by the State Board of Education.
 - (9) To have under his or her direction and control all matters relating to the provision of staff services, except certain personnel appointed by the State Board as provided in G.S. 115C-11(j), and support of the State Board of Education, including implementation of federal programs on behalf of the State Board.
- (b) Duties as Secretary to the State Board of Education. – ~~Subject to the direction, control, and approval of the State Board of Education, As secretary to the State Board of Education,~~ it shall be the duty of the Superintendent of Public Instruction:
- (4) ~~To administer through the Department of Public Instruction, the instructional policies established by the Board.~~
 - (1a) Repealed by Session Laws 1995, c. 72, s. 2.

General Assembly Of North Carolina Fourth Extra Session 2016

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

SECTION 5. G.S. 115C-408(a) reads as rewritten:

"(a) It is the policy of the State of North Carolina to create a public school system that graduates good citizens with the skills demanded in the marketplace, and the skills necessary to cope with contemporary society, using State, local and other funds in the most cost-effective manner. The Board shall have general supervision and administration of the educational funds provided by the State and federal governments, except those mentioned in Section 7 of Article IX of the State Constitution, and also excepting such local funds as may be provided by a county, city, or district. The Superintendent of Public Instruction shall administer any available educational funds through the Department of Public Instruction in accordance with all needed rules and regulations adopted by the State Board of Education."

SECTION 6. G.S. 115C-410 reads as rewritten:

"§ 115C-410. Power to accept gifts and grants.

The Board is authorized to adopt all needed rules and regulations related to the creation and administration of special funds within the Department of Public Instruction to manage any funds received as grants from nongovernmental sources in support of public education. In accordance with the State Board's rules and regulations, the Superintendent of Public Instruction is authorized to create and administer such special funds and to accept, receive, use, or reallocate to local school administrative units any gifts, donations, grants, devises, or other forms of voluntary contributions."

SECTION 7. G.S. 126-5(d) reads as rewritten:

- "(d) (1) Exempt Positions in Cabinet Department. – Subject to the provisions of this Chapter, which is known as the North Carolina Human Resources Act, the

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Governor may designate a total of ~~1,500~~ 425 exempt positions throughout the following departments and offices:

- a. Department of Administration.
- b. Department of Commerce.
- c. Repealed by Session Laws 2012-83, s. 7, effective June 26, 2012, and by Session Laws 2012-142, s. 25.2E(a), effective January 1, 2013.
- d. Department of Public Safety.
- e. Department of Natural and Cultural Resources.
- f. Department of Health and Human Services.
- g. Department of Environmental Quality.
- h. Department of Revenue.
- i. Department of Transportation.
- j. Repealed by Session Laws 2012-83, s. 7, effective June 26, 2012, and by Session Laws 2012-142, s. 25.2E(a), effective January 1, 2013.
- k. Department of Information Technology.
- l. ~~Office of State Budget and Management.~~
- m. ~~Office of State Human Resources.~~
- n. Department of Military and Veterans Affairs.

- (2) Exempt Positions in Council of State Departments and Offices. – The Secretary of State, the Auditor, the Treasurer, the Attorney General, the Commissioner of Agriculture, the Commissioner of Insurance, and the Labor Commissioner may designate exempt positions. The State Board of Education may designate exempt positions in the Department of Public Instruction. The number of exempt policymaking positions in each department headed by an elected department head listed above in this ~~sub-subdivisionsub-subdivision, other than the Department of Public Instruction,~~ shall be limited to ~~20-25~~ exempt policymaking positions or ~~one~~ two percent ~~(1%)(2%)~~ of the total number of full-time positions in the department, whichever is greater. The number of exempt managerial positions shall be limited to ~~20-25~~ positions or ~~one~~ two percent ~~(1%)(2%)~~ of the total number of full-time positions in the department, whichever is greater. The number of exempt policymaking positions designated by the State Board of Education shall be limited to 70 exempt policymaking positions or two percent (2%) of the total number of full-time positions in the department, whichever is greater. The number of exempt managerial positions designated by the State Board of Education shall be limited to 70 exempt managerial positions or two percent (2%) of the total number of full-time positions in the department, whichever is greater.

- ...
- (2c) Changes in Cabinet Department Exempt Position Designation. – If the status of a position designated exempt pursuant to subsection (d)(1) of this section is changed and the position is made subject to the provisions of this Chapter, an employee occupying the position who has been continuously employed in a permanent position for the immediate 12 preceding months, shall be deemed a career State employee as defined by G.S. 126-1.1(a) upon the effective date of the change in designation.

...."

SECTION 8. G.S. 126-5(d), as amended by Section 7 of this act, reads as rewritten:

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- "(d) (1) Exempt Positions in Cabinet Department. – Subject to the provisions of this Chapter, which is known as the North Carolina Human Resources Act, the Governor may designate a total of 425 exempt positions throughout the following departments and offices:
- a. Department of Administration.
 - b. Department of Commerce.
 - c. Repealed by Session Laws 2012-83, s. 7, effective June 26, 2012, and by Session Laws 2012-142, s. 25.2E(a), effective January 1, 2013.
 - d. Department of Public Safety.
 - e. Department of Natural and Cultural Resources.
 - f. Department of Health and Human Services.
 - g. Department of Environmental Quality.
 - h. Department of Revenue.
 - i. Department of Transportation.
 - j. Repealed by Session Laws 2012-83, s. 7, effective June 26, 2012, and by Session Laws 2012-142, s. 25.2E(a), effective January 1, 2013.
 - k. Department of Information Technology.
 - l. Repealed.
 - m. Repealed.
 - n. Department of Military and Veterans Affairs.
- (2) Exempt Positions in Council of State Departments and Offices. – The Secretary of State, the Auditor, the Treasurer, the Attorney General, the Superintendent of Public Instruction, the Commissioner of Agriculture, the Commissioner of Insurance, and the Labor Commissioner may designate exempt positions. ~~The State Board of Education may designate exempt positions in the Department of Public Instruction.~~ The number of exempt policymaking positions in each department headed by an elected department head listed above in this ~~sub-subdivision, other than the Department of Public Instruction, sub-subdivision~~ shall be limited to 25 exempt policymaking positions or two percent (2%) of the total number of full-time positions in the department, whichever is greater. The number of exempt managerial positions shall be limited to 25 positions or two percent (2%) of the total number of full-time positions in the department, whichever is greater. The number of exempt policymaking positions designated by the ~~State Board of Education~~ Superintendent of Public Instruction shall be limited to 70 exempt policymaking positions or two percent (2%) of the total number of full-time positions in the department, whichever is greater. The number of exempt managerial positions designated by the ~~State Board of Education~~ Superintendent of Public Instruction shall be limited to 70 exempt managerial positions or two percent (2%) of the total number of full-time positions in the department, whichever is greater.
- (2a) Designation of Additional Positions. – ~~The Governor, Governor or~~ elected department head, ~~or State Board of Education head~~ may request that additional positions be designated as exempt. The request shall be made by sending a list of exempt positions that exceed the limit imposed by this subsection to the Speaker of the North Carolina House of Representatives and the President of the North Carolina Senate. A copy of the list also shall be sent to the Director of the Office of State Human Resources. The General Assembly may authorize all, or part of, the additional positions to be

designated as exempt positions. If the General Assembly is in session when the list is submitted and does not act within 30 days after the list is submitted, the list shall be deemed approved by the General Assembly, and the positions shall be designated as exempt positions. If the General Assembly is not in session when the list is submitted, the 30-day period shall not begin to run until the next date that the General Assembly convenes or reconvenes, other than for a special session called for a specific purpose not involving the approval of the list of additional positions to be designated as exempt positions; the policymaking positions shall not be designated as exempt during the interim.

- (2b) Designation of Liaison Positions. – Liaisons to the Collaboration for Prosperity Zones set out in G.S. 143B-28.1 for the Departments of Commerce, Environmental Quality, and Transportation are designated as exempt.
- (2c) Changes in Cabinet Department Exempt Position Designation. – If the status of a position designated exempt pursuant to subsection (d)(1) of this section is changed and the position is made subject to the provisions of this Chapter, an employee occupying the position who has been continuously employed in a permanent position for the immediate 12 preceding months, shall be deemed a career State employee as defined by G.S. 126-1.1(a) upon the effective date of the change in designation.
- (3) Letter. – These positions shall be designated in a letter to the Director of the Office of State Human Resources, the Speaker of the House of Representatives, and the President of the Senate by July 1 of the year in which the oath of office is administered to each Governor unless the provisions of subsection (d)(4) apply.
- (4) Vacancies. – In the event of a vacancy in the Office of Governor or in the office of a member of the Council of State, the person who succeeds to or is appointed or elected to fill the unexpired term shall make such designations in a letter to the Director of the Office of State Human Resources, the Speaker of the House of Representatives, and the President of the Senate within 180 days after the oath of office is administered to that person. ~~In the event of a vacancy in the Office of Governor, the State Board of Education shall make these designations in a letter to the Director of the Office of State Human Resources, the Speaker of the House of Representatives, and the President of the Senate within 180 days after the oath of office is administered to the Governor.~~
- (5) Creation, Transfer, or Reorganization. – ~~The Governor, Governor or elected department head, or State Board of Education head~~ may designate as exempt a position that is created or transferred to a different department, or is located in a department in which reorganization has occurred, after October 1 of the year in which the oath of office is administered to the Governor. The designation must be made in a letter to the Director of the Office of State Human Resources, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate within 180 days after such position is created, transferred, or in which reorganization has occurred.
- (6) Reversal. – Subsequent to the designation of a position as an exempt position as hereinabove provided, the status of the position may be reversed and made subject to the provisions of this Chapter by the ~~Governor, Governor or~~ by an elected department head, ~~or by the State Board~~

~~of Education head~~ in a letter to the Director of the Office of State Human Resources, the Speaker of the North Carolina House of Representatives, and the President of the North Carolina Senate.

- (7) Hearing Officers. – Except for deputy commissioners appointed pursuant to G.S. 97-79 and as otherwise specifically provided by this section, no employee, by whatever title, whose primary duties include the power to conduct hearings, take evidence, and enter a decision based on findings of fact and conclusions of law based on statutes and legal precedents shall be designated as exempt. This subdivision shall apply beginning July 1, 1985, and no list submitted after that date shall designate as exempt any employee described in this subdivision."

SECTION 9. G.S. 143-745(a)(1) reads as rewritten:

- "(1) "Agency head" means the Governor, a Council of State member, a cabinet secretary, the President of The University of North Carolina, the President of the Community College System, the State Controller, and other independent appointed officers with authority over a State agency. ~~The agency head for the Department of Public Instruction shall be the State Board of Education.~~"

SECTION 10. G.S. 143A-44.1 reads as rewritten:

"§ 143A-44.1. Creation.

There is hereby created a Department of Public Instruction. The head of the Department of Public Instruction is the ~~State Board of Education. Any provision of G.S. 143A-9 to the contrary notwithstanding, the appointment of the State Board of Education shall be as prescribed in Article IX, Section (4)(1) of the Constitution.~~Superintendent of Public Instruction."

SECTION 11. G.S. 143A-44.2 is repealed.

SECTION 12. G.S. 143A-44.3 reads as rewritten:

"§ 143A-44.3. Superintendent of Public Instruction; creation; transfer of powers and duties.

The office of the Superintendent of Public Instruction, as provided for by Article III, Section 7 of the Constitution, and the Department of Public Instruction are transferred to the Department of Public Instruction. The Superintendent of Public Instruction shall be the Secretary and Chief Administrative Officer of the State Board of Education, and shall have all powers and duties conferred by this Chapter and the Constitution, delegated to him or her by the Governor and by the State Board of Education, and conferred by Chapter 115C of the General Statutes, Statutes and the laws of this State."

SECTION 13. G.S. 14-234(d6) is repealed.

SECTION 14. G.S. 115C-75.5(4) reads as rewritten:

- "(4) ASD Superintendent. – The superintendent of the ASD appointed by the ~~State Board of Education~~Superintendent of Public Instruction in accordance with G.S. 115C-75.6(b)."

SECTION 15. G.S. 115C-75.6 reads as rewritten:

"§ 115C-75.6. Achievement School District.

(a) There is established the Achievement School District (ASD) under the administration of the State Board of ~~Education~~Education and the Superintendent of Public Instruction. The ASD shall assume the supervision, management, and operation of elementary schools that have been selected as achievement schools pursuant to this Article.

(b) ~~An ASD Superintendent Selection Advisory Committee shall be established to make a recommendation to the State Board of Education on appointment of a superintendent to serve as the executive officer of the ASD. The Committee shall ensure that the individual recommended has qualifications consistent with G.S. 115C-271(a). The Lieutenant Governor shall serve as chair of the Committee and shall appoint the following additional members:~~

- (1) ~~Three members of the State Board of Education.~~
- (2) ~~One teacher or retired teacher.~~
- (3) ~~One principal or retired principal.~~
- (4) ~~One superintendent or retired superintendent.~~
- (5) ~~One parent of a student currently enrolled in a low performing school, as defined in G.S. 115C-105.37.~~

(c) ~~The State Board of Education shall consider the recommendation of the ASD Superintendent Selection Advisory Committee and Superintendent of Public Instruction shall appoint a superintendent to serve as the executive officer of the ASD. The ASD Superintendent shall serve at the pleasure of the State Board of Education Superintendent of Public Instruction at a salary established by the State Board of Education Superintendent of Public Instruction within the funds appropriated for this purpose. The ASD Superintendent shall have qualifications consistent with G.S. 115C-271(a) and report directly to the State Board of Education Superintendent of Public Instruction.~~

(d) By January 15 annually, the State Board of ~~Education~~Education, Superintendent of Public Instruction, and the ASD Superintendent shall report to the Joint Legislative Education Oversight Committee on all aspects of operation of ASD, including the selection of achievement schools and their progress."

SECTION 16. G.S. 115C-150.11 reads as rewritten:

"§ 115C-150.11. State Board of Education as governing agency.

The State Board of Education shall be the sole governing agency for the Governor Morehead School for the Blind, the Eastern North Carolina School for the Deaf, and the North Carolina School for the Deaf. The ~~Department Superintendent of Public Instruction through the Department of Public Instruction~~ shall be responsible for the ~~administration~~administration, including appointment of staff, and oversight of a school governed by this Article."

SECTION 17. G.S. 115C-218 reads as rewritten:

"§ 115C-218. Purpose of charter schools; establishment of North Carolina Charter Schools Advisory Board and North Carolina Office of Charter Schools.

...

(b) North Carolina Charter Schools Advisory Board. –

- (1) Advisory Board. – There is created the North Carolina Charter Schools Advisory Board, hereinafter referred to in this Article as the Advisory Board. The Advisory Board shall be located administratively within the Department of Public Instruction and shall report to the State Board of Education.
- (2) Membership. – The State Superintendent of Public Instruction, or the Superintendent's designee, shall be the secretary of the Advisory Board and a nonvoting member. ~~The Chair of the State Board of Education shall appoint a member of the State Board to serve as a nonvoting member of the Advisory Board.~~ The Advisory Board shall consist of the following 11 voting members:
 - a. ~~Three members appointed by the Governor, including the chair of the Advisory Board.~~
 - b. ~~Three~~Four members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, in accordance with G.S. 120-121.
 - c. ~~Three~~Four members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, in accordance with G.S. 120-121.
 - d. ~~One member~~Two members appointed by the State Board of Education who ~~is~~are not a ~~current member~~members of the State

Board of Education and who ~~is~~are charter school ~~advocate~~advocates in North Carolina.

e. The Lieutenant Governor or the Lieutenant Governor's designee.

- (3) Covered board. – The Advisory Board shall be treated as a board for purposes of Chapter 138A of the General Statutes.
 - (4) Qualifications of members. – Members appointed to the Advisory Board shall collectively possess strong experience and expertise in public and nonprofit governance, management and finance, assessment, curriculum and instruction, public charter schools, and public education law. All appointed members of the Advisory Board shall have demonstrated an understanding of and a commitment to charter schools as a strategy for strengthening public education.
 - (5) Terms of office and vacancy appointments. – Appointed members shall serve four-year terms of office beginning on July 1. No appointed member shall serve more than eight consecutive years. Vacancy appointments shall be made by the appointing authority for the remainder of the term of office.
 - (6) Presiding officers and quorum. – The Advisory Board shall annually elect a chair and a vice-chair from among its membership. The chair shall preside over the Advisory Board's meetings. In the absence of the chair, the vice-chair shall preside over the Advisory Board's meetings. A majority of the Advisory Board constitutes a quorum.
 - (7) Presiding officers and quorum. – Meetings. – Meetings of the Advisory Board shall be held upon the call of the chair or the vice-chair with the approval of the chair.
 - (8) Expenses. – Members of the Advisory Board shall be reimbursed for travel and subsistence expenses at the rates allowed to State officers and employees by G.S. 138-6(a).
 - (9) Removal. – Any appointed member of the Advisory Board may be removed by a vote of at least two-thirds of the members of the Advisory Board at any duly held meeting for any cause that renders the member incapable or unfit to discharge the duties of the office.
 - (10) Powers and duties. – The Advisory Board shall have the following duties:
 - a. To make recommendations to the State Board of Education on the adoption of rules regarding all aspects of charter school operation, including time lines, standards, and criteria for acceptance and approval of applications, monitoring of charter schools, and grounds for revocation of charters.
 - b. To review applications and make recommendations to the State Board for final approval of charter applications.
 - c. To make recommendations to the State Board on actions regarding a charter school, including renewals of charters, nonrenewals of charters, and revocations of charters.
 - d. To undertake any other duties and responsibilities as assigned by the State Board.
 - (11) Duties of the chair of the Advisory Board. – In addition to any other duties prescribed in this Article, the chair of the Advisory Board, or the chair's designee, shall advocate for the recommendations of the Advisory Board at meetings of the State Board upon the request of the State Board.
- (c) North Carolina Office of Charter Schools. –
- (1) Establishment of the North Carolina Office of Charter Schools. – There is established the North Carolina Office of Charter Schools, hereinafter

referred to in this Article as the Office of Charter Schools. The Office of Charter Schools shall be administratively located in the Department of Public Instruction, ~~subject to the supervision, direction, and control of the State Board of Education.~~Instruction. The Office of Charter Schools shall consist of an executive director appointed by the ~~State Board of Education~~Superintendent of Public Instruction and such other professional, administrative, technical, and clerical personnel as may be necessary to assist the Office of Charter Schools in carrying out its powers and duties.

- (2) Executive Director. – The Executive Director shall report to and serve at the pleasure of the ~~State Board of Education~~Superintendent of Public Instruction at a salary established by the ~~State Board~~Superintendent within the funds appropriated for this purpose. The duties of the Executive Director shall include presenting the recommendations of the Advisory Board at meetings of the State Board upon the request of the State Board.
- (3) Powers and duties. – The Office of Charter Schools shall have the following powers and duties:
- Serve as staff to the Advisory Board and fulfill any task and duties assigned to it by the Advisory Board.
 - Provide technical assistance and guidance to charter schools operating within the State.
 - Provide technical assistance and guidance to nonprofit corporations seeking to operate charter schools within the State.
 - Provide or arrange for training for charter schools that have received preliminary approval from the State Board.
 - Assist approved charter schools and charter schools seeking approval from the State Board in coordinating services with the Department of Public Instruction.
 - Other duties as assigned by the ~~State Board~~Superintendent of Public Instruction.
- (4) Agency cooperation. – All State agencies and departments shall cooperate with the Office of Charter Schools in carrying out its powers and duties as necessary in accordance with this Article."

SECTION 18. G.S. 115C-218.20(b) reads as rewritten:

"(b) No civil liability shall attach to the State Board of Education, the Superintendent of Public Instruction, or to any of their members or employees, individually or collectively, for any acts or omissions of the charter school."

SECTION 19. G.S. 115C-238.73(g) reads as rewritten:

"(g) There shall be no liability for negligence on the part of the board of directors, or its employees, or the State Board of Education, the Superintendent of Public Instruction, or ~~itsany of their members or~~ employees, individually or collectively, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes."

SECTION 20. G.S. 115C-332(g) reads as rewritten:

"(g) There shall be no liability for negligence on the part of a local board of education, or its employees, or the State Board of Education, the Superintendent of Public Instruction, or ~~itsany of their members or~~ employees, individually or collectively, arising from any act taken

or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Chapter 31 of Chapter 143 of the General Statutes."

SECTION 21. G.S. 115C-333(e) reads as rewritten:

"(e) Civil Immunity. – There shall be no liability for negligence on the part of the State Board of ~~Education~~Education, the Superintendent of Public Instruction, or a local board of education, or their members or employees, individually or collectively, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes."

SECTION 22. G.S. 115C-333.1(g) reads as rewritten:

"(g) Civil Immunity. – There shall be no liability for negligence on the part of the State Board of ~~Education~~Education, the Superintendent of Public Instruction, or a local board of education, or their members or employees, individually or collectively, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes."

SECTION 23. G.S. 115C-390.3(c) reads as rewritten:

"(c) Notwithstanding any other law, no ~~officer~~officer, member, or employee of the State Board of ~~Education~~Education, the Superintendent of Public Instruction, or of a local board of ~~education~~education, individually or collectively, shall be civilly liable for using reasonable force in conformity with State law, State or local rules, or State or local policies regarding the control, discipline, suspension, and expulsion of students. Furthermore, the burden of proof is on the claimant to show that the amount of force used was not reasonable."

SECTION 24. G.S. 115C-521 reads as rewritten:

"§ 115C-521. Erection of school buildings.

...
(b) It shall be the duty of the local boards of education ~~of the several local school administrative school units of the State~~ to make provisions for the public school term by providing adequate school buildings equipped with suitable school furniture and apparatus. The needs and the cost of those buildings, equipment, and apparatus, shall be presented each year when the school budget is submitted to the respective tax-levying authorities. The boards of commissioners shall be given a reasonable time to provide the funds which they, upon investigation, shall find to be necessary for providing their respective units with buildings suitably equipped, and it shall be the duty of the several boards of county commissioners to provide funds for the same.

Upon determination by a local board of education that the existing permanent school building does not have sufficient classrooms to house the pupil enrollment anticipated for the school, the local board of education may acquire and use as temporary classrooms for the

operation of the school, relocatable or mobile classroom units, whether built on the lot or not, which units and method of use shall meet the approval of the School Planning Division of the ~~State Board of Education, Department of Public Instruction~~, and which units shall comply with all applicable requirements of the North Carolina State Building Code and of the local building and electrical codes applicable to the area in which the school is located. These units shall also be anchored in a manner required to assure their structural safety in severe weather. The acquisition and installation of these units shall be subject in all respects to the provisions of Chapter 143 of the General Statutes. The provisions of Chapter 87, Article 1, of the General Statutes, shall not apply to persons, firms or corporations engaged in the sale or furnishing to local boards of education and the delivery and installation upon school sites of classroom trailers as a single building unit or of relocatable or mobile classrooms delivered in less than four units or sections.

...
(f) A local board of education may use prototype designs from the clearinghouse established under subsection (e) of this section that is a previously approved and constructed project by the School Planning Division of the ~~State Board of Education, Department of Public Instruction~~ and other appropriate review agencies. The local board of education may contract with the architect of record to make changes and upgrades as necessary for regulatory approval.
...."

SECTION 25. G.S. 115C-535 reads as rewritten:

"§ 115C-535. Authority and rules for organization of system.

The ~~State Board of Education~~Superintendent of Public Instruction is hereby authorized, directed and empowered to establish a division to manage and operate a system of insurance for public school ~~property-property~~ in accordance with all needed rules and regulations adopted by the State Board of Education. The Board shall adopt such rules and regulations as, in its discretion, may be necessary to provide all details inherent in the insurance of public school property. The ~~Board~~Superintendent of Public Instruction shall employ a director, safety inspectors, engineers and other personnel with suitable training and experience, which in ~~its~~his or her opinion is necessary to insure and protect effectively public school property, and ~~it~~he or she shall fix their compensation consistent with the ~~approval~~policies of the ~~Personnel~~State Human Resources Commission."

SECTION 26. G.S. 116-239.12(g) reads as rewritten:

"(g) There shall be no liability for negligence on the part of the board of trustees, or its employees, or the State Board of ~~Education~~Education, the ~~Superintendent of Public Instruction~~, or ~~its~~their members or employees, individually or collectively, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes."

SECTION 27. G.S. 143B-146.16(g) reads as rewritten:

"(g) There shall be no liability for negligence on the part of the Secretary, the Department of Health and Human Services or its employees, a residential school or its employees, or the State Board of ~~Education~~Education, ~~Superintendent of Public Instruction~~, or ~~its~~their members or employees, individually or collectively, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance,

indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes."

SECTION 28. Section 8.37 of S.L. 2015-241, as amended by Section 8.30 of S.L. 2016-94, reads as rewritten:

"BUDGET REDUCTIONS/DEPARTMENT OF PUBLIC INSTRUCTION

"SECTION 8.37.(a) Notwithstanding G.S. 143C-6-4, the ~~State Board of Education~~ Department of Public Instruction may, after consultation with the Office of State Budget and Management and the Fiscal Research Division, reorganize the Department of Public Instruction, if necessary, to implement the budget reductions for the 2015-2017 fiscal biennium. Consultation shall occur prior to requesting budgetary and personnel changes through the budget revision process. The ~~State Board~~Department of Public Instruction shall provide a current organization chart for the Department of Public Instruction in the consultation process and shall report to the Joint Legislative Commission on Governmental Operations on any reorganization.

"SECTION 8.37.(b) In implementing budget reductions for the 2015-2017 fiscal biennium, the ~~State Board of Education~~Department of Public Instruction shall make no reduction to funding or positions for (i) the North Carolina Center for Advancement of Teaching and (ii) the Eastern North Carolina School for the Deaf, the North Carolina School for the Deaf, and the Governor Morehead School, except that the ~~State Board~~Superintendent of Public Instruction may, in its discretion, reduce positions at these institutions that have been vacant for more than 16 months. The ~~State Board~~Department of Public Instruction shall also make no reduction in funding to any of the following entities:

- (1) Communities in Schools of North Carolina, Inc.
- (2) Teach For America, Inc.
- (3) Beginnings for Parents of Children who are Deaf or Hard of Hearing, Inc.

"SECTION 8.37.(c) In implementing budget reductions for the 2016-2017 fiscal year, the Department of Public Instruction shall do all of the following:

- (1) In addition to the prohibition on a reduction to funding and positions for the items listed in subsection (b) of this section, the Department shall make no transfers from or reduction to funding or positions for the following:
 - a. The Excellent Public Schools Act, Read to Achieve Program, initially established under Section 7A.1 of S.L. 2012-142.
 - b. The North Carolina School Connectivity Program.
- (2) The Department shall transfer the sum of fifty thousand dollars (\$50,000) to the Office of Administrative Hearings to be allocated to the Rules Review Commission, created by G.S. 143B-30.1, to pay for any litigation costs incurred in the defense of *North Carolina State Board of Education v. The State of North Carolina and The Rules Review Commission*, Wake County Superior Court, File No. 14 CVS 14791 (filed November 7, 2014). These funds shall not revert at the end of the 2016-2017 fiscal year but shall remain available during the 2017-2018 fiscal year for expenditure in accordance with the provisions of this subdivision."

SECTION 29. By May 15, 2017, the State Board of Education shall revise, as necessary, any of its rules and regulations to comply with the provisions of this Part.

SECTION 30. The Department of Public Instruction shall review all State laws and rules and regulations governing the public school system to ensure compliance with the intent of this Part to restore authority to the Superintendent of Public Instruction as the administrative head of the Department of Public Instruction and the Superintendent's role in the direct supervision of the public school system. By April 15, 2017, the Department of Public

Instruction shall report to the 2017 General Assembly on the results of its review, including any recommended legislation.

SECTION 31. Notwithstanding G.S. 115C-11, as amended by this act, the current student advisor and the local superintendent advisor members serving on the State Board of Education as of the effective date of this Part shall serve the remainder of their terms. Thereafter, as terms expire, or when a vacancy occurs prior to the expiration of a term, the student advisor and local superintendent advisor members on the State Board shall be appointed by the Superintendent of Public Instruction in accordance with G.S. 115C-11, as amended by this act.

SECTION 32. Notwithstanding G.S. 115C-218, as amended by this act, the current members serving on the North Carolina Charter Schools Advisory Board as of the effective date of this Part shall serve the remainder of their terms. For the two terms appointed by the Governor expiring in 2017, one member shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, in accordance with G.S. 120-121, and one member shall be appointed by the State Board of Education in accordance with G.S. 115C-218. For the one term appointed by the Governor expiring in 2019, that member shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, in accordance with G.S. 120-121. As terms expire thereafter or as vacancies occur prior to the expiration of a term, the members on the North Carolina Charter Schools Advisory Board shall be appointed in accordance with G.S. 115C-218, as amended by this act. If a vacancy occurs in a seat appointed by the Governor, the State Board of Education shall fill that vacancy for the remainder of that term. Upon expiration of that term, the member shall be appointed in accordance with G.S. 115C-218.

SECTION 33. Sections 1 through 6 and Sections 8 through 32 of this Part become effective January 1, 2017. The remainder of this Part is effective when it becomes law.

PART II. MODIFY APPOINTMENT OF UNC BOARDS OF TRUSTEES

SECTION 35. G.S. 116-31 reads as rewritten:

"§ 116-31. Membership of the boards of trustees.

(a) ~~All persons who, as of June 30, 1972, are serving as trustees of the regional universities and of the North Carolina School of the Arts, redesignated effective August 1, 2008, as the "University of North Carolina School of the Arts," except those who may have been elected to the Board of Governors, shall continue to serve for one year beginning July 1, 1972, and the terms of all such trustees shall continue for the period of one year.~~

(b) Effective July 1, 1972, a separate board of trustees shall be created for each of the following institutions: North Carolina State University at Raleigh, the University of North Carolina at Asheville, the University of North Carolina at Chapel Hill, the University of North Carolina at Charlotte, the University of North Carolina at Greensboro, and the University of North Carolina at Wilmington. ~~For the period commencing July 1, 1972, and ending June 30, 1973, each such board shall be constituted as follows:~~

(1) ~~Twelve or more persons elected prior to July 1, 1972, by and from the membership of the Board of Trustees of the University of North Carolina, and~~

(2) ~~The president of the student government of the institution, ex officio.~~

(c) ~~If any vacancy should occur in any board of trustees during the year beginning July 1, 1972, the Governor may appoint a person to serve for the balance of the year.~~

(d) Except as provided in G.S. 116-65, ~~effective July 1, 1973,~~ each of the 16 institutions of higher education set out in G.S. 116-2(4) shall have board of trustees composed of 13 persons chosen as follows:

(1) ~~Eight elected by the Board of Governors, Governors.~~

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(2) ~~Four appointed by the Governor, and~~

(2a) Four members appointed by the General Assembly under G.S. 120-121, two of whom shall be appointed upon the recommendation of the President Pro Tempore of the Senate and two of whom shall be appointed upon the recommendation of the Speaker of the House of Representatives.

(3) The president of the student government ex officio.

The Board of Trustees of the North Carolina School of Science and Mathematics shall be established in accordance with G.S. 116-233.

(e) ~~From and after July 1, 1973, the~~ The term of office of all trustees, except the ex officio member, shall be four years, commencing on July 1 of odd-numbered years. In every odd-numbered year the Board of Governors shall elect four persons to each board of trustees and the ~~Governor-General Assembly shall appoint two persons one person upon the recommendation of the President Pro Tempore of the Senate and one person upon the recommendation of the Speaker of the House of Representatives to each such board.~~

(g) ~~From and after July 1, 1973, any~~ Any person who has served two full four-year terms in succession as a member of a board of trustees shall, for a period of one year, be ineligible for election or appointment to the same board but may be elected or appointed to the board of another institution.

(h) No member of the General Assembly or officer or employee of the State, The University of North Carolina, or any constituent institution shall be eligible for election or appointment as a trustee. No spouse of a member of the General Assembly, or of an officer or employee of a constituent institution may be a trustee of that constituent institution. Any trustee who is elected or appointed to the General Assembly or who becomes an officer or employee of the State, The University of North Carolina, or any constituent institution or whose spouse is elected or appointed to the General Assembly or becomes an officer or employee of that constituent institution shall be deemed thereupon to resign from his or her membership on the board of trustees.

(i) No person may serve simultaneously as a member of a board of trustees and as a member of the Board of Governors. Any trustee who is elected or appointed to the Board of Governors shall be deemed to resign as a trustee effective as of the date that his or her term commences as a member of the Board of Governors.

(j) ~~From and after July 1, 1973, whenever~~ Whenever any vacancy shall occur in the membership of a board of trustees among those appointed by the ~~Governor-General Assembly,~~ it shall be the duty of the secretary of the board to inform the ~~Governor-General Assembly~~ of the existence of such vacancy, and the ~~Governor shall appoint a person to fill the unexpired term, vacancy shall be filled as provided in G.S. 120-122,~~ and whenever any vacancy shall occur among those elected by the Board of Governors, it shall be the duty of the secretary of the board to inform the Board of Governors of the existence of the vacancy, and the Board of Governors shall elect a person to fill the unexpired term. Whenever a member shall fail, for any reason other than ill health or service in the interest of the State or nation, to be present for three successive regular meetings of a board of trustees, his or her place as a member shall be deemed vacant."

SECTION 36. G.S. 116-233 reads as rewritten:

"§ 116-233. Board of Trustees; appointment; terms of office.

(a) Notwithstanding the provisions of G.S. 116-31(d), there shall be a Board of Trustees of the School, which shall consist of up to 30 members as follows:

(1) Thirteen members who shall be appointed by the Board of Governors of The University of North Carolina, one from each congressional district.

(2) Four members without regard to residency who shall be appointed by the Board of Governors of The University of North Carolina.

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- (3) Three members, ex officio, who shall be the chief academic officers, respectively, of constituent institutions. The Board of Governors shall in 1985 and quadrennially thereafter designate the three constituent institutions whose chief academic officers shall so serve, such designations to expire on June 30, 1989, and quadrennially thereafter.
- (4) The chief academic officer of a college or university in North Carolina other than a constituent institution, ex officio. The Board of Governors shall designate in 1985 and quadrennially thereafter which college or university whose chief academic officer shall so serve, such designation to expire on June 30, 1989, and quadrennially thereafter.
- (5) ~~Two~~ Three members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.
- (6) ~~Two~~ Three members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.
- ~~(7) Two members appointed by the Governor.~~
- (8) The president of the student government, ex officio, who shall be a nonvoting member.
- (9) Up to two additional nonvoting members selected at the discretion of the chancellor and the Board of Trustees, with terms expiring June 30 of each year.

(b) Appointed members of the Board of Trustees shall be selected for their interest in and commitment to public education and to the purposes of the School, and they shall be charged with the responsibility of serving the interests of the whole State. In appointing members, the objective shall be to obtain the services of the best qualified persons, taking into consideration the desirability of diversity of membership, including men and women, representatives of different races, and members of different political parties.

(c) No member of the General Assembly or officer or employee of the State, the School, The University of North Carolina, or of any constituent institution of The University of North Carolina, shall be eligible to be appointed to the Board of Trustees except as specified under subdivision (3) of subsection (a) of this section. No spouse of a member of the General Assembly, or of an officer or employee of the school may be a member of the Board of Trustees. Any appointed trustee who is elected or appointed to the General Assembly or who becomes an officer or employee of the State, except as specified under subdivision (3) of subsection (a) of this section, or whose spouse is elected or appointed to the General Assembly or becomes such an officer or employee of the School, shall be deemed thereupon to resign from his or her membership on the Board of Trustees. This subsection does not apply to ex officio members.

(d) Members appointed under subdivisions (1) or (2) of subsection (a) of this section shall serve staggered four-year terms expiring June 30 of odd numbered years.

(d1) Only an ex officio member shall be eligible to serve more than two successive terms.

(d2) Any vacancy in the membership of the Board of Trustees appointed under G.S. 116-233(a)(1) or (2) shall be reported promptly by the Secretary of the Board of Trustees to the Board of Governors of The University of North Carolina, which shall fill any such vacancy by appointment of a replacement member to serve for the balance of the unexpired term. Any vacancy in members appointed under G.S. 116-233(a)(5) or (6) shall be filled in accordance with G.S. 120-122. ~~Any vacancy in members appointed under G.S. 116-233(a)(7) shall be filled by the Governor for the remainder of the unexpired term.~~ Reapportionment of

congressional districts does not affect the right of any member to complete the term for which the member was appointed.

(e) ~~Of the initial members appointed under G.S. 116-233(a)(5), G.S. 116-233(a)(5) in 1985, one member shall serve a term to expire June 30, 1987, and one member shall serve a term to expire June 30, 1989. Subsequent appointments shall be for four-year terms. The initial members appointed under G.S. 116-233(a)(6), G.S. 116-233(a)(6) in 1985 shall be appointed for terms to expire June 30, 1987. Subsequent appointments shall be for two-year terms. The initial members appointed under G.S. 116-233(a)(7) shall be appointed for terms to expire January 15, 1989. Successors shall be appointed for four year terms until January 15, 2017, at which point subsequent appointments shall be for four-year terms.~~

(e1) The initial members appointed under G.S. 116-233(a)(5) and (6) in 2017, and successors of those members, shall serve four-year terms.

(f) Whenever an appointed member of the Board of Trustees shall fail, for any reason other than ill health or service in the interest of the State or nation, to be present at three successive regular meetings of the Board, his or her place as a member of the Board shall be deemed vacant."

SECTION 37. This Part is effective when it becomes law and applies to (i) vacancy appointments made on or after that date and (ii) appointments to fill terms expiring January 15, 2017, and thereafter. A vacancy by any board member appointed by the Governor to any board affected by this Part shall be filled by joint recommendation of the Speaker of the House of Representatives and the President Pro Tempore of the Senate, as provided in G.S. 120-121. The terms of members holding office as of the effective date of this Part shall not be affected.

PART III. SENATE CONFIRMATION OF CABINET APPOINTEES

SECTION 38. G.S. 143B-9 reads as rewritten:

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

(a) The head of each principal State department, except those departments headed by popularly elected officers, shall be appointed by the Governor and serve at ~~his~~ the Governor's pleasure. The salary of the head of each of the principal State departments shall be set by the Governor, and the salary of elected officials shall be as provided by law.

For each head of each principal State department covered by this subsection, the Governor shall notify the President of the Senate of the name of each person to be appointed, and the appointment shall be subject to senatorial advice and consent in conformance with Section 5(8) of Article III of the North Carolina Constitution unless (i) the senatorial advice and consent is expressly waived by an enactment of the General Assembly or (ii) a vacancy occurs when the General Assembly is not in regular session. Any person appointed to fill a vacancy when the General Assembly is not in regular session may serve without senatorial advice and consent for no longer than the earlier of the following:

- (1) The date on which the Senate adopts a simple resolution that specifically disapproves the person appointed.
- (2) The date on which the General Assembly shall adjourn pursuant to a joint resolution for a period longer than 30 days without the Senate adopting a simple resolution specifically approving the person appointed.

(b) The head of a principal State department shall appoint a chief deputy or chief assistant, and such chief deputy or chief assistant shall not be subject to the North Carolina Human Resources Act. The salary of such chief deputy or chief assistant shall be set by the Governor. Unless otherwise provided for in the Executive Organization Act of 1973, and subject to the provisions of the ~~Personnel-Human Resources Act~~, the head of each principal State department shall designate the administrative head of each transferred agency and all employees of each division, section, or other unit of the principal State department."

SECTION 39. This Part is effective when it becomes law.

PART IV. ESTABLISH TASK FORCE FOR SAFER SCHOOLS; TRANSFER CENTER FOR SAFER SCHOOLS

SECTION 41.1.(a) Effective December 15, 2016, the Center for Safer Schools is hereby moved to the Department of Public Instruction, Division of Safe and Healthy Schools Support. This transfer shall have all of the elements of a Type I transfer, as defined in G.S. 143A-6.

SECTION 41.1.(b) Article 8C of Chapter 115C of the General Statutes is amended by adding two new sections to read:

"§ 115C-105.55. Establish Task Force for Safer Schools.

(a) Task Force Established. – There is hereby created the Task Force for Safer Schools within the North Carolina Department of Public Instruction.

(b) Membership. – The Task Force shall consist of 25 members. The composition of the Task Force shall include all of the following:

- (1) The Secretary of the Department of Public Safety or the Secretary's designee.**
- (2) The Secretary of the Department of Health and Human Services or the Secretary's designee.**
- (3) A member of the State Board of Education appointed by the Governor.**
- (4) Two local school board members appointed by the Chair of the State Board of Education.**
- (5) A representative from the North Carolina Department of Public Safety, Division of Emergency Management, appointed by the Secretary of the Department of Public Safety.**
- (6) A representative from the North Carolina Justice Academy appointed by the Attorney General.**
- (7) A member of the Governor's Crime Commission appointed by the Governor.**
- (8) Two local law enforcement officers appointed by the Governor.**
- (9) Two public school administrators appointed by the Chair of the State Board of Education.**
- (10) A public school teacher appointed by the Chair of the State Board of Education.**
- (11) A public school psychologist appointed by the Governor.**
- (12) A public school resource officer appointed by the Governor.**
- (13) Two high school students currently enrolled at public high schools appointed by the Governor.**
- (14) A parent of a currently enrolled public school student appointed by the Governor.**
- (15) A juvenile justice professional appointed by the Governor.**
- (16) A North Carolina licensed social worker appointed by the Governor.**
- (17) A North Carolina licensed school counselor appointed by the Governor.**
- (18) An expert in gang intervention and prevention in schools appointed by the Governor.**
- (19) Three at-large members appointed by the Governor.**

(c) Appointment of Chair and Vice-Chair. – The Governor shall appoint a Chair and Vice-Chair from among the membership of the Task Force. The Chair and Vice-Chair shall serve at the pleasure of the Governor.

(d) Terms; Vacancies. – Effective December 1, 2016, all members shall be appointed for a term of four years. Members may be reappointed to successive terms. Any appointment to

fill a vacancy on the Task Force created by the resignation, dismissal, death, disability, or disqualification of a member shall be for the balance of the unexpired term.

(e) Removal. – The Governor shall have the authority to remove any member of the Task Force for misfeasance, malfeasance, or nonfeasance, pursuant to the provisions of G.S. 143B-13.

(f) Per Diem, Etc. – Members of the Task Force may receive necessary per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

"§ 115C-105.56. Task Force for Safer Schools; powers and duties.

The Task Force shall have all of the following duties:

- (1) To serve as an advisory board to the Center for Safer Schools.
- (2) To provide guidance and recommendations to the Governor, Superintendent of Public Instruction, and the General Assembly to improve statewide policy to enhance statewide and local capacities to create safer schools.
- (3) To encourage interagency collaboration among State and local government agencies to achieve effective policies and streamline efforts to create safer schools.
- (4) To Assist the Center for Safer Schools in collecting and disseminating information on recommended best practices and community needs related to creating safer schools in North Carolina.
- (5) Other duties as assigned by the State Board of Education."

PART V. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 42. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end, the provisions of this act are severable.

SECTION 43. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16th day of December, 2016.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 4:30 p.m. this 19th day of December, 2016

CONSTITUTION OF NORTH CAROLINA OF 1868

DELEGATES TO THE CONSTITUTIONAL CONVENTION⁷⁹

Raleigh, January 14-March 17, 1868

President, Calvin J. Cowles, Wilkes

President *Pro Tem*, Richard W. King,⁸⁰ Lenoir

Secretary, T. A. Byrnes, Cumberland

Secretary *Pro Tem*, Joshua P. Andrews,⁸¹ Wake

James H. Harris,⁸² Wake

Assistant Secretary, John H. Bonner, [Wake]

Name	District	County	Name	District	County
W. A. B. Murphey	1		Wilson Carey	25	Caswell
John S. Parks	1		Phillip Hodnett	25	Caswell
William H. Logan	2	Rutherford	Henry M. Ray	26	Alamance
Jesse Rhodes	2	Henderson	William Merritt	27	Person
Julius S. Garland	3	[Mitchell]	John W. Graham	28	Orange
Thomas J. Candler	4	Buncombe	Edwin M. Holt	28	Orange
James H. Duckworth	4	Transylvania	William T. Gunter	29	Chatham
George W. Gahagan	4	Madison	John A. McDonald	29	Chatham
W. G. B. Garrett	5	Haywood	Joshua P. Andrews	30	Wake
George W. Dickey	6	Cherokee	Stokes D. Franklin	30	Wake
Mark May	6	Macon	James H. Harris	30	Wake
Edwin C. Bartlett ⁸³	7	Alleghany	B. S. D. Williams	30	Wake
Evan Benbow	7	Yadkin	Cuffey Mayo	31	Granville
George W. Bradley	7	Watauga	James J. Moore	31	Granville
Samuel Forkner	7	Surry	John W. Ragland	31	Granville
John G. Marler ⁸⁴	7	Yadkin	John A. Hyman	32	Warren
John H. Marshall ⁸⁵	7	Surry	John Read	32	Warren
John Q. A. Bryan	8	Wilkes	James T. Harris	33	Franklin
Calvin J. Cowles	8	Wilkes	John H. Williamson	33	Franklin
Wesley H. George	8	Iredell	James H. Hood	34	Cumberland
Calvin C. Jones	8	Caldwell	William A. Mann	34	Cumberland
Jerry Smith	8	Alexander	James M. Turner	35	Harnett
Milton Hobbs	9	Davie	Swain S. McDonald	36	Moore
Allen Rose	9	Rowan	George A. Graham	37	Montgomery
Isaac M. Shaver ⁸⁶	9	Rowan	Richmond T. Long, Sr.	38	Richmond
James S. McCubbins ⁸⁷	9	Rowan	Hiram L. Grant	39	Wayne
Plato Durham	10	Cleveland	Jesse Hollowell	39	Wayne
James R. Ellis	11	Catawba	Nathan Gullely	40	Johnston
Joseph H. King	12	Lincoln	John M. Patrick	41	Greene
Milot J. Aydlott	13	Gaston	Willie Daniel	42	Wilson
Edward Fullings	14	Mecklenburg	Jacob Ing	43	Nash
Silas N. Stilwell	14	Mecklenburg	Henry Eppes	44	Halifax
William Newson	15	Union	J. J. Hayes	44	Halifax
William T. Blume	16	Cabarrus	John H. Renfrow	44	Halifax
Levi C. Morton	17	Stanly	Henry T. Grant	45	Northampton
Henry Chillson	18	Anson	Roswell C. Parker	45	Northampton
George Tucker	18	Anson	Joseph H. Baker	46	Edgecombe
Riley F. Petree	19	Stokes	Henry C. Cherry	46	Edgecombe
Elijah B. Teague	20	Forsyth	Henry A. Dowd	46	Edgecombe
Isaac Kinney	21	Davidson	Richard W. King	47	Lenoir
Spencer Mullican	21	Davidson	Edwin Legg	48	Brunswick
Talton L. L. Cox	22	Randolph	Hayes Lennon	49	Colombus
Reuben F. Trogdon	22	Randolph	O. S. Hayes	50	Robeson
Albion W. Tourgee	23	Guilford	Joshua L. Nance	50	Robeson
G. William Welker	23	Guilford	Abiel W. Fisher	51	Bladen
Henry Barnes	24	Rockingham	Frederick F. French	51	Bladen
John French	24	Rockingham	Joseph C. Abbott	52	New Hanover

SEC. 4. It shall be the duty of the Legislature to provide for the organization of cities, towns, and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debts, by such municipal corporation.

Article IX.

Education.

SECTION 1. Religion, morality, and knowledge being necessary to good government and happiness of mankind, schools, and the means of education, shall forever be encouraged.

SEC. 2. The General Assembly at its first session under this Constitution, shall provide by taxation and otherwise for a general and uniform system of Public Schools, wherein tuition shall be free of charge to all the children of the State between the ages of six and twenty-one years.

SEC. 3. Each County of the State shall be divided into a convenient number of Districts, in which one or more Public Schools shall be maintained, at least four months in every year; and if the Commissioners of any County shall fail to comply with the aforesaid requirement of this section, they shall be liable to indictment.

SEC. 4. The proceeds of all lands that have been, or hereafter may be, granted by the United States to this State and not otherwise specially appropriated by the United States or heretofore by this State; also all monies, stocks, bonds, and other property now belonging to any fund for purposes of Education; also the net proceeds that may accrue to the State from sales of estrays or from fines, penalties and forfeitures; also the proceeds of all sales of the swamp lands belonging to the State; also all money that shall be paid as an equivalent for exemptions from military duty; also, all grants, gifts or devises that may hereafter be made to this State, and not otherwise appropriated by the grant, gift or devise, shall be securely invested, and sacredly preserved as an irreducible educational fund, the annual income of which, together with so much of the ordinary revenue of the State as may be necessary, shall be faithfully appropriated for establishing and perfecting, in this State, a system of Free Public Schools, and for no other purposes or uses whatsoever.

SEC. 5. The University of North Carolina with its lands, emoluments and franchises, is under the Control of the State, and shall be held to an inseparable connection with the Free Public School System of the State.

SEC. 6. The General Assembly shall provide that the benefits of the University, as far as practicable, be extended to the youth of the State free of expense for tuition; also, that all the property which has heretofore accrued to the State, or shall hereafter accrue from escheats, unclaimed dividends or distributive shares of the estates of deceased persons, shall be appropriated to the use of the University.

SEC. 7. The Governor, Lieutenant-Governor, Secretary of State, Treasurer, Auditor, Superintendent of Public Works, Superintendent of Public Instruction and Attorney General, shall constitute a State Board of Education.

SEC. 8. The Governor shall be President, and the Superintendent of Public Instruction shall be Secretary, of the Board of Education.

SEC. 9. The Board of Education shall succeed to all the powers and trusts of the President and directors of the Literary Fund of North Carolina, and shall have full power to legislate and make all needful rules and regulations in relation to Free Public Schools, and the Educational fund of the State; but all acts, rules and regulations of said Board may be altered, amended, or repealed by the General Assembly, and when so altered, amended or repealed by the General Assembly, and when so altered, amended or repealed they shall not be reenacted by the Board.

SEC. 10. The first session of the Board of Education shall be held at the Capital of the State, within fifteen days after the organization of the State Government under this Constitution; the time of future meetings may be determined by the Board.

SEC. 11. A majority of the Board shall constitute a quorum for the transaction of business.

SEC. 12. The contingent expenses of the Board shall be provided for by the General Assembly.

SEC. 13. The Board of Education shall elect Trustees for the University, as follows: One trustee for each County in the State, whose term of office shall be eight years. The first meeting of the Board shall be held within ten days after their election, and at this and every subsequent meeting, ten Trustees shall constitute a quorum. The Trustees, at their first meeting, shall be divided, as equally as may be, into four classes. The seats of the first class shall be vacated at the expiration of two years; of the second class at the expiration of four years; of the third class at the expiration of six years; of the fourth class at the expiration of eight years; so that one fourth may be chosen every second year.

SEC. 14. The Board of Education and the President of the University, shall be *ex officio* members of the Board of Trustees of the University; and shall, with three other Trustees to be appointed by the Board of Trustees, constitute the Executive Committee of the Trustees of the University of North Carolina, and shall be clothed with the powers delegated to the Executive Committee under the existing organization of the Institution. The Governor shall be *ex officio* President of the Board of Trustees and Chairman of the Executive Committee of the University. The Board of Education shall provide for the more perfect organization of the Board of Trustees.

SEC. 15. All the privileges, rights, franchises and endowments heretofore granted to, or conferred upon, the Board of Trustees of the University of North Carolina by the Charter of 1789, or by any subsequent legislation, are hereby vested in the Board of Trustees, authorized by this Constitution, for the perpetual benefit of the University.

SEC. 16. As soon as practicable after the adoption of this Constitution, the General Assembly shall establish and maintain, in connection with the University, a Department of Agriculture, of Mechanics, of Mining and of Normal Instruction.

SEC. 17. The General Assembly is hereby empowered to enact that every child of sufficient mental and physical ability, shall attend the Public Schools during the period between the ages of six and eighteen years, for a term of not less than sixteen months, unless educated by other means.

NORTH CAROLINA
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STATE OF NORTH CAROLINA

PUBLIC LAWS AND RESOLUTIONS

PASSED BY THE

GENERAL ASSEMBLY

AT ITS

SESSION OF 1941

HELD IN THE CITY OF RALEIGH

BEGINNING ON

WEDNESDAY, THE EIGHTH DAY OF JANUARY, A. D. 1941

PUBLISHED BY AUTHORITY

CHARLOTTE
THE OBSERVER PRINTING HOUSE, INC.
1941

Conflicting laws
repealed.

SEC. 3. That all laws and clauses of laws in conflict with this Act are hereby repealed.

SEC. 4. That this Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 12th day of March, 1941.

H. B. 783

CHAPTER 150

AN ACT TO AMEND HOUSE BILL NUMBER TWO HUNDRED AND NINETY-FIVE, RELATING TO PUBLIC DRUNKENNESS, SO AS TO ELIMINATE BURKE COUNTY FROM THE PROVISIONS THEREOF.

The General Assembly of North Carolina do enact:

H. B. 295 (Ch. 82, Public Laws, 1941), amended, eliminating Burke County from law.

SECTION 1. That House Bill Number two hundred and ninety-five, ratified March fifth, one thousand nine hundred and forty-one, be, and the same is hereby, amended by striking out the word "Burke" wherever the same appears therein.

Conflicting laws
repealed.

SEC. 2. That all laws and clauses of laws in conflict with this Act are hereby repealed.

SEC. 3. That this Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 12th day of March, 1941.

S. B. 107

CHAPTER 151

AN ACT TO AMEND THE CONSTITUTION PROVIDING FOR THE ORGANIZATION OF THE STATE BOARD OF EDUCATION AND THE POWERS AND DUTIES OF THE SAME.

The General Assembly of North Carolina do enact:

Proposed amendment of Article IX, N. C. Constitution.

SECTION 1. That Article IX, Sections eight and nine, of the Constitution of North Carolina be amended by substituting for the said sections the following:

Creation of State Board of Education.

"SEC. 8. State Board of Education. The general supervision and administration of the free public school system, and of the educational funds provided for the support thereof, shall, from and after the first day of April, one thousand nine hundred and forty-three, be vested in a State Board of Education to consist of the Lieutenant Governor, State Treasurer, the Superintendent of Public Instruction, and one member from each Congressional

Membership.

District to be appointed by the Governor. The State Superintendent of Public Instruction shall have general supervision of the public schools and shall be secretary of the board. There shall be a comptroller appointed by the Board, subject to the approval of the Governor as director of the Budget, who shall serve at the will of the board and who, under the direction of the board, shall have supervision and management of the fiscal affairs of the board. The appointive members of the State Board of Education shall be subject to confirmation by the General Assembly in joint session. A majority of the members of said board shall be persons of training and experience in business and finance, who shall not be connected with the teaching profession or any educational administration of the State. The first appointments under this section shall be members from odd numbered Congressional Districts for two years, and members from even numbered Congressional Districts for four years and, thereafter, all appointments shall be made for a term of four years. All appointments to fill vacancies shall be made by the Governor for the unexpired term, which appointments shall not be subject to confirmation. The board shall elect a chairman and a vice-chairman. A majority of the board shall constitute a quorum for the transaction of business. The per diem and expenses of the appointive members of the board shall be provided by the General Assembly."

Secretary.

Appointment and term of Comptroller.

Duties.

Confirmation of appointive members.

Type of members.

Appointment and terms of members.

Vacancy appointments.

Chairman and Vice-Chairman.

Quorum at meetings.

Compensation of appointive members.

SEC. 2. That Article IX, Sections ten, eleven, twelve and thirteen, of the Constitution of North Carolina, be amended by substituting thereof one section, to be designated as Section nine, which shall be as follows:

Further proposed amendment of Art. IX, N. C. Constitution.

"SEC. 9. Powers and Duties of the Board. The State Board of Education shall succeed to all the powers and trusts of the President and Directors of the Literary Fund of North Carolina and the State Board of Education as heretofore constituted. The State Board of Education shall have power to divide the State into a convenient number of school districts; to regulate the grade, salary and qualifications of teachers; to provide for the selection and adoption of the text books to be used in the public schools; to apportion and equalize the public school funds over the State; and generally to supervise and administer the free public school system of the State and make all needful rules and regulations in relation thereto. All the powers enumerated in this section shall be exercised in conformity with this Constitution and subject to such laws as may be enacted from time to time by the General Assembly."

Powers and duties of State Board of Education.

Exercise of powers in conformity with Constitution and Statutes.

SEC. 3. That Sections fourteen and fifteen of Article IX of the Constitution of North Carolina shall be changed to Sections ten and eleven of Article IX of the Constitution of North Carolina.

Further proposed amendment of Art. IX, renumbering certain sections.

SEC. 4. That Sections one, two and three of this Act shall be submitted at the next general election of the qualified voters in the State, in the same way and manner, and under the same

Referendum on proposed amendments.

rules and regulations as provided in the laws governing general elections in this State.

Form of ballots.

SEC. 5. That electors favoring the adoption of the amendments in Sections one, two and three of this Act shall vote ballots, on which shall be printed or written the words "For State Board of Education Amendments," and those opposed shall vote ballots, on which shall be printed or written the words "Against State Board of Education Amendments."

Conduct of election.

SEC. 6. That the election upon these amendments shall be conducted in the same manner and under the same rules and regulations as provided by the laws governing general elections, and if a majority of the votes cast be in favor of these amendments, it shall be the duty of the Governor of the State to certify the amendments under the Seal of the State to the Secretary of State, who shall enroll said amendments so certified among the permanent records of his office, and the amendments so certified, and every part thereof, shall be in force from and after the date of such certification.

Upon ratification, amendments certified by Governor to Secretary of State.

Conflicting laws repealed.

SEC. 7. That all laws and clauses of laws in conflict with this Act are hereby repealed.

SEC. 8. That this Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 13th day of March, 1941.

S. B. 137

CHAPTER 152

AN ACT TO AMEND CONSOLIDATED STATUTES FIVE THOUSAND ONE HUNDRED AND SIXTY-EIGHT (e), AS AMENDED, FIVE THOUSAND ONE HUNDRED AND SIXTY-EIGHT (i), AS AMENDED, FIVE THOUSAND ONE HUNDRED AND SIXTY-EIGHT (r), VOLUME THREE, ONE THOUSAND NINE HUNDRED TWENTY-FOUR, AND CHAPTER ONE HUNDRED AND EIGHTY-SEVEN OF THE PUBLIC LAWS OF ONE THOUSAND NINE HUNDRED AND THIRTY-NINE, RELATING TO CONFEDERATE PENSIONS AND THE PAYMENT OF FUNERAL EXPENSES OF DECEASED PENSIONERS.

The General Assembly of North Carolina do enact:

C.S. 5168 (e), amended, as to examination and classification of applicants for Confederate pensions.

SECTION 1. That Consolidated Statutes five thousand one hundred and sixty-eight (e) of Volume three, one thousand nine hundred and twenty-four, as amended by Chapter one hundred and six of the Public Laws, Extra Session, one thousand nine hundred and twenty-four, be, and the same is hereby, amended by striking out after the word "pensions" in line two and before

SEC. 19. Provision for sinking funds. Before allocating all or any part of unappropriated surplus revenues and unencumbered balances to a capital reserve fund a municipality may make allocation thereof to a sinking fund for the retirement of term bonds, but such allocation or allocations, together with all other assets of the sinking fund, shall not exceed the amount of the term bonds outstanding and unpaid.

Sinking fund for retirement of term bonds.

Limitation of allocation.

SEC. 20. Separability of provisions. If any part of this Act shall be held unconstitutional, the parts not unconstitutional shall remain in force, and the unconstitutional part shall be regarded as excised.

Partial invalidity section.

SEC. 21. All laws and clauses of laws in conflict with the provisions of this Act are hereby repealed.

Conflicting laws repealed.

SEC. 22. This Act shall be in force and effect from and after its ratification.

Ratified this the 5th day of March, 1943.

S. B. 29

CHAPTER 468

AN ACT TO AMEND THE CONSTITUTION PROVIDING FOR THE ORGANIZATION OF THE STATE BOARD OF EDUCATION.

The General Assembly of North Carolina do enact:

SECTION 1. Article IX, Section eight, of the Constitution of North Carolina is hereby amended by substituting for the said section, the following:

Art. IX, Sec. 8, N. C. Constitution, amended.

"SEC. 8. State Board of Education. The general supervision and administration of the free public school system, and of the educational funds provided for the support thereof, except those mentioned in Section five of this Article, shall, from and after the first day of April, one thousand nine hundred and forty-five, be vested in the State Board of Education to consist of the Lieutenant Governor, State Treasurer, the Superintendent of Public Instruction, and ten members to be 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, which may be altered from time to time by the General Assembly. Of the appointive members of the State Board of Education, one shall be appointed from each of the eight educational districts, and two shall be appointed as members at large. The first appointments under this section shall be: Two members appointed from educational districts for terms of two years; two members appointed from educational districts for terms of four years; two members appointed from educational districts for terms of six years; and two

Administration of free public school system by State Board of Education.

How Board constituted.

Eight educational districts for State.

One appointive member of Board from each district.

Two members at large.

Method of first appointments.

Terms of subsequent appointments.

Vacancies.

Superintendent of Public Instruction to be administrative head of system and secretary of Board.

Quorum.

Per diem and expenses of appointive members.

Amendment to be submitted at next general election.

Form of ballots.

Manner of conducting election.

If majority favor amendment, Governor to certify amendment.

Secretary of State to enroll amendment.

Conflicting laws repealed.

members appointed from educational districts for terms of eight years. One member at large shall be appointed for a period of four years and one member at large shall be appointed for a period of eight years. All subsequent appointments shall be for terms of eight years. Any appointments to fill vacancies shall be made by the Governor for the unexpired term, which appointments shall not be subject to confirmation. The State Superintendent of Public Instruction shall be the administrative head of the public school system and shall be secretary of the board. The board shall elect a chairman and vice-chairman. A majority of the board shall constitute a quorum for the transaction of business. The per diem and expenses of the appointive members shall be provided by the General Assembly."

SEC. 2. Section one of this Act shall be submitted at the next general election to the qualified voters in the State in the same way and manner and under the same rules and regulations governing general elections in this State.

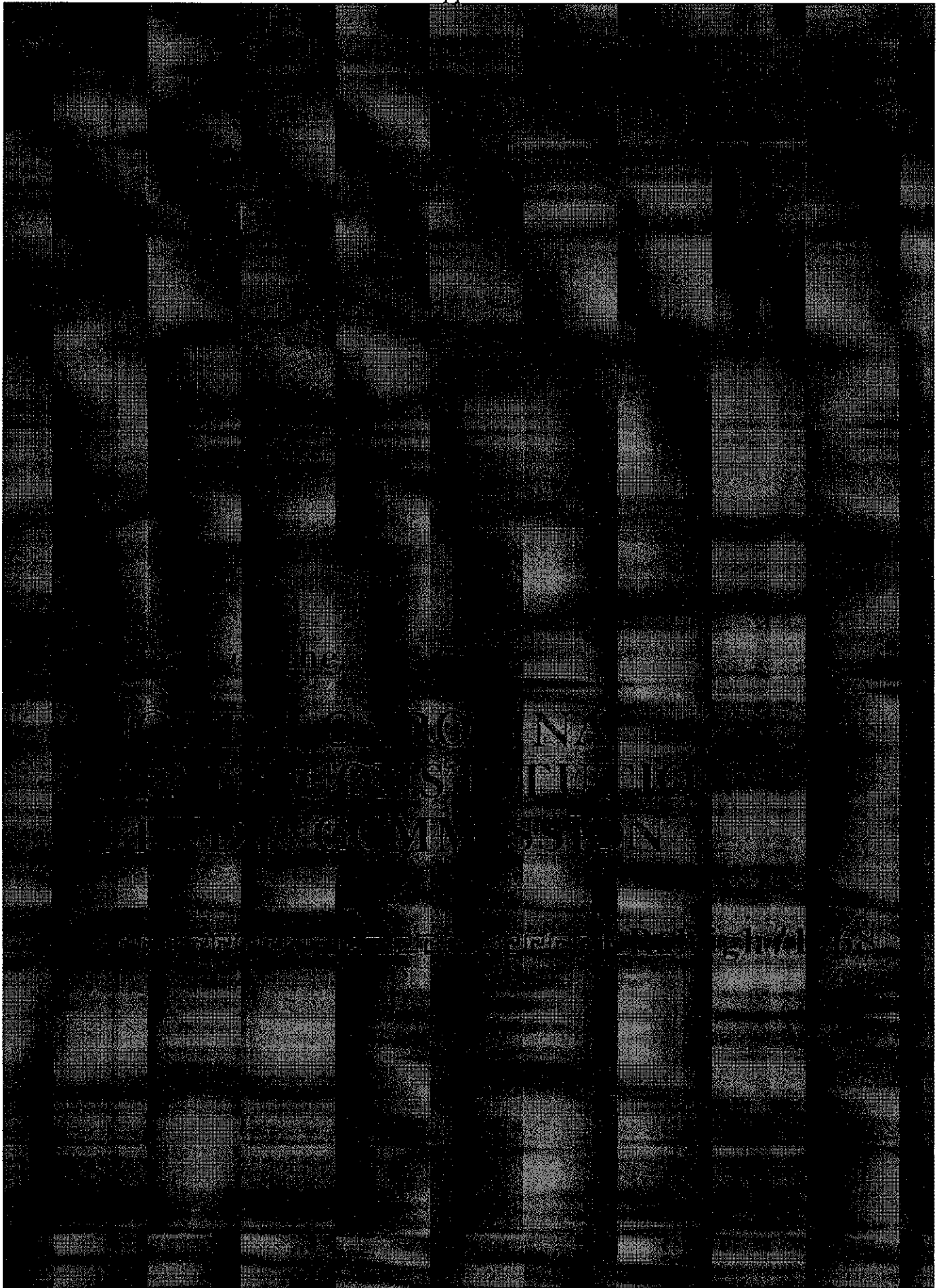
SEC. 3. In such election the electors favoring the adoption of the amendment in Section one of this Act shall vote ballots on which shall be printed or written the words "For State Board of Education Amendment," and those opposed shall vote ballots on which shall be written or printed the words "Against State Board of Education Amendment."

SEC. 4. The election upon this amendment shall be conducted in the same manner and under the same rules and regulations as provided by the laws governing general elections, and if a majority of votes cast be in favor of this amendment, it shall be the duty of the Governor of the State to certify the amendment under the Seal of the State to the Secretary of State, who shall enroll said amendment so certified among the permanent records of his office, and the amendment so certified shall be in force, and every part thereof, from and after the date of such certification.

SEC. 5. All laws and clauses of laws in conflict with this Act are hereby repealed.

SEC. 6. This Act shall be in full force and effect from and after its ratification.

Ratified this the 5th day of March, 1943.



A final Sec. 3 is added to make it clear that a merged or consolidated city-county shall be deemed to be both a city and county for such constitutional purposes as legislative representation and restrictions on the power of local governments to tax and incur debt.

Article VIII. Corporations

Present Article VIII contains three sections dealing with business corporations and other non-municipal corporations and a fourth section dealing with cities and towns. This last section (Sec. 4) we recommend be transferred to Article VII (Local Government) with some modifications.

The three sections dealing with non-municipal corporations date from 1868, with an amendment adopted in 1916 requiring in effect that business corporations be incorporated under general laws, rather than by special act of the General Assembly as had been the frequent practice prior to that time. We have retained present Secs. 1 and 3, with no substantive change. Present Sec. 2 is obsolete and meaningless and is deleted.

Article IX. Education

Article IX has been rearranged to improve the order of treatment of the subjects dealt with by that article, and its language has been modified to eliminate obsolete provisions and to make the article reflect current practice in the administration and financing of schools.

Proposed Sec. 1 adds "libraries" to the list of institutions that the General Assembly is urged to encourage.

Proposed Sec. 2 extends the mandatory school term from six months to a minimum of nine months and eliminates the possibly restrictive age limits on tuition-free public schooling. It also authorizes units of local government to which the General Assembly assigns a share of the

responsibility for financing public education to finance educational programs (including both public schools and technical institutes and community colleges) from local revenues. It omits the now-unconstitutional language on the separation of the races in the public schools.

Proposed Sec. 3 makes it mandatory (rather than permissive) that the General Assembly require public school attendance and omits the obsolete limitation on compulsory attendance to a total of sixteen months.

Proposed Sec. 4(1) modifies the State Board of Education slightly by eliminating the Superintendent of Public Instruction as a voting member of the Board while retaining him as the Board's secretary and chief administrative officer. He is replaced by an additional at-large appointee. Continuity of board membership is not otherwise affected. The Superintendent of Public Instruction will continue to be popularly elected, as required by Art. III, § 7(1). A potential conflict of authority between the Superintendent and the Board is eliminated by making clear that he is the administrative officer of the Board (Sec. 4[2]), which is to administer the public schools (Sec. 5).

Proposed Sec. 5 restates, in much abbreviated form, the duties of the State Board of Education, but without any intention that its authority be reduced.

Proposed Sec. 6 restates present Sec. 4, dealing with the state school fund, without substantive change.

Proposed Sec. 7 restates present Sec. 5, dealing with the county school fund, without change except to delete obsolete references to "proceeds from the sale of estrays" and militia exemption payments.