

NORTH CAROLINA COURT OF APPEALS

JOSHUA H. STEIN, in his official
capacity as GOVERNOR OF THE
STATE OF NORTH CAROLINA,

Plaintiff-Appellee,

v.

PHILIP E. BERGER, in his official
capacity as PRESIDENT PRO
TEMPORE OF THE NORTH
CAROLINA SENATE; and DESTIN
C. HALL, in his official capacity as
SPEAKER OF THE NORTH
CAROLINA HOUSE OF
REPRESENTATIVES,

Defendants-Appellants,

and

DAVE BOLIEK, in his official
capacity as NORTH CAROLINA
STATE AUDITOR

Defendant-Intervenor-
Appellant.

From Wake County

**REPLY BRIEF OF THE
NORTH CAROLINA STATE AUDITOR**

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Introduction

The text of our Constitution resolves this case. Intra-branch transfers of powers and duties within the executive branch are contemplated by, and authorized in, Article III of the North Carolina Constitution. The Constitution's Reorganization Clause gives the General Assembly the power to "prescribe" and "alter" the "functions, powers, and duties" of executive officers. N.C. Const. art. III, § 5(10). Likewise, Article III, Section 7(2) provides for the duties of Council of State members to be set by the General Assembly. *Id.* at § 7(2) ("duties shall be prescribed by law"). No other constitutional provision is impaired by giving these Article III provisions their plain meaning.

Consistent with Article III's express terms, Senate Bill 382 transferred appointment power for the State and County Boards of Elections from one executive official to another, all within the same branch. This intra-branch transfer does not implicate separation-of-powers concerns, does not violate the Take Care Clause, and is not barred by the Vesting Clause. Nor does Article III, Section 11 impose any substantive constraint on the General Assembly's intra-branch transfers. The Governor misconceives his place within our plural executive,

minimizing the constitutional stature of the other Council of State officers.

In *Stein v. Berger*, 2025 WL 2919426 (N.C. Ct. App. Oct. 15, 2025) (“*Stein Commissions*”), this Court addressed intra-branch transfers of appointment powers within the Council of State. This Court found no constitutional infringement with changing appointment powers as long as executive officers, not legislative officials, retained the majority appointment power. *Id.* at *8. Here, the appointment power for the Boards of Elections remains fully within the executive branch. *Stein Commissions* is controlling, and this Court is bound by its own prior decision. *In re Civil Penalty*, 324 N.C. 373, 384 (1989).

For all these reasons, this Court should reject the Governor’s attempt to unwind Senate Bill 382 and should reverse the Panel’s decision.

I. The Constitutionality of Intra-Branch Transfers of Appointment Authority to Executive Boards Was Already Decided in *Stein Commissions*.

In *Stein Commissions*, this Court considered legislation that changed appointment power for the Environmental Management Commission (“EMC”), Coastal Resources Commission (“CRC”), and

Wildlife Resources Commission (“WRC”).¹ 2025 WL 2919426 at *7–8.

Prior to the challenged legislation, appointments were made as follows:

- EMC – Governor (9 appointments); General Assembly (6 appointments).
- CRC – Governor (9); General Assembly (4).
- WRC – Governor (11); General Assembly (8).

After the legislation, the appointments were made as follows:

- EMC – Governor (7); General Assembly (6); Commissioner of Agriculture (2).
- CRC – Governor (6); General Assembly (6); Commissioner of Insurance (1).
- WRC – Governor (10); General Assembly (10); Commissioner of Agriculture (1).

Each change to the EMC, CRC, and WRC resulted in the executive branch retaining the majority of the appointments.

Governor Cooper filed suit and presented the same arguments on the Vesting Clause, Take Clause, and Separation of Powers Clause Governor Stein presents here, and Governor Stein was substituted in as Plaintiff-Appellant in that case after taking office. Plaintiff-Appellant’s Brief [of Governor], No. 24-440, at 23–34 (N.C. Ct. App. Oct. 1, 2024);

¹ Other agencies had their appointment restructuring evaluated too, but those restructurings did not retain majority-appointment authority within the executive branch and, therefore, are not comparable.

Order [substituting parties], No. 24-440 (N.C. Ct. App. Feb. 5, 2025). The trial court upheld the constitutionality of the appointment-power changes, and the Governor appealed.

This Court affirmed this restructuring of executive branch appointment power and found no constitutional violation. *Stein Commissions*, 2025 WL 2919426 at *8. There was no separation of powers violation because the executive branch retained majority-appointment power and “can exert most of the control over the executive policy that is implemented.” *Id.* Council of State members were given some of that majority-appointment power in the restructuring, but no Take Care Clause violation occurred because the Governor’s duty there was a nonexclusive duty conferred on all Council of State members. *Id.*

The applicable holding of *Stein Commissions* is that transferring appointment power for executive boards among executive branch officials survives the Governor’s constitutional challenges. *Id.* Here, the appointment power for the Boards of Elections previously held by the Governor was transferred to the Auditor—a fully intra-branch transfer within the executive branch. The transfer of appointment power here is the same issue considered in *Stein Commissions* because it maintains the

majority appointment authority within the executive branch. No Separation of Powers, Take Care, or Vesting Clause violation has occurred, and this transfer is constitutional without even having to consider the powers given to the General Assembly under Article III of the Constitution to re-allocate duties and powers. *See generally id.* (only the concurrence of Murry, J., referencing Article III powers).

“Where a panel of the Court of Appeals has decided the same issue, ... a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court.” *In re Civil Penalty*, 324 N.C. at 384; *see also Mole’ v. City of Durham*, 384 N.C. 78, 91 (2023) (Earls, J., dissenting from denial of discretionary review) (“As the opinion was published by the Court of Appeals ... it should be binding precedent unless reversed by [the Supreme] Court.”). Since the same issue—the transfer of executive branch appointment power that keeps majority-appointment power within the Council of State—has already been decided by this Court, the Panel’s order should be reversed, and Senate Bill 382 should be deemed constitutional.

II. The Governor Cannot Sidestep the Supreme Court's Order in This Case.

Even if *Stein Commissions* had not been decided, our Supreme Court has already held that in blocking Senate Bill 382 from taking effect, the Superior Court Panel “unambiguously misapplied [the Supreme] Court’s precedent.” *Stein v. Berger*, 387 N.C. 575, 576 (2025) (“*Stein I*”). “This Court is an error-correcting court,” *Shera v. N.C. State Univ. Veterinary Teaching Hosp.*, 219 N.C. App. 117, 127 (2012), and the Supreme Court determined the Panel erred. This Court should reverse for that reason alone.

If that were not enough to warrant reversal, the Supreme Court also articulated its view on pertinent underlying principles, like the idea that the Governor cannot appeal to the Take Care Clause to retain appointment power over the Board because the duty to “take care” the laws are faithfully executed is “nonexclusive.” *Stein I*, 387 N.C. at 578 n.4. These statements also demonstrate the error in the Panel’s decision. In response, the Governor lobs three attacks to discount the persuasiveness of the Supreme Court’s order. None stick.

First, the Governor asserts that, instead of only looking at the merits of the case, the Supreme Court based its decision “on an equitable

analysis ... that [is] inapposite here.” Gov. Br. 10. It is true the Supreme Court recited the standard for reviewing a Court of Appeals order on writ of certiorari, which requires the petitioner to demonstrate not only likely error on the merits, but also “extraordinary circumstances warranting the writ.” *Stein I*, 387 N.C. at 576. But the Court then determined that “[t]he Governor’s filings fail at the first step”—likely error. *Id.* And the Court never went on to consider the other prongs in the certiorari analysis. It never had to balance the equities because the merits analysis was so clear.

Second, the Governor points out the Supreme Court was tasked only with deciding whether this Court abused its discretion, not whether its analysis was wrong based on a de novo review. Even if technically true, that is functionally of no consequence. “[A]n abuse of discretion is established when the [lower] court makes an error of law.” *State v. Melvin*, 856 S.E.2d 525, 530 (N.C. 2021). Because the Supreme Court’s analysis of whether this Court abused its discretion only discussed issues of law, the Supreme Court engaged in a functionally de novo assessment.

Even setting that point aside, the standard of review does not take the persuasive force out of the Supreme Court’s analysis. The Court made

several pronouncements about the law in its decision, and it did not couch them in language about abusing discretion. It framed them as absolute, objectively correct statements of the law. For instance, the Court observed the Governor “does not unilaterally exercise the executive power,” and the Governor’s duty to “take care that the laws be faithfully executed” is “a nonexclusive duty conferred upon all ten Council of State members.” *Stein I*, 387 N.C. at 576, 578 n.4; *see also Stein Commissions*, 2025 WL 2919426 at *2, 8. Whatever the Governor wants to say about the standard of review, he cannot dispute the Supreme Court found errors of law in the Panel’s decision.

Finally, the Governor highlights the unremarkable fact that the Supreme Court’s order is not precedential. Putting aside how dubious it would be for this Court to ignore the Supreme Court’s legal conclusions, that path was foreclosed by *Stein Commissions*. This Court in *Stein Commissions* adopted many of the Supreme Court’s conclusions, 2025 WL 2919426 at *2, 8, and these statements of the law are now binding, *In re Civil Penalty*, 324 N.C. at 384.

III. The Governor Misconstrues the Relationship Between His Office and the Council of State.

To argue for keeping the appointment power to himself, the Governor disregards our State's plural executive structure. He first exaggerates his own role in our system, claiming something about the nature of his office means he alone must retain control over the Board. Gov. Br. 13–15. He then undersells the role of the other members of his branch, asserting the General Assembly can only assign duties to a Council of State officer that are “sufficiently related to [that officer's] major purpose.” *Id.* at 18 (internal quotation marks omitted). Both ideas are wrong several times over.

A. Nothing About the Nature of the Governor's Office Means He Must Oversee the Board.

Any interpretation of the Constitution begins with its express terms. *Martin v. State*, 330 N.C. 412, 415–16 (1991) (comparing constitutional interpretation to statutory interpretation); *see also Philip Morris USA, Inc. v. N.C. Dep't of Revenue*, 386 N.C. 748, 755 (2024) (duty of statutory interpretation is to give effect to a statute's plain meaning). As explained in the Auditor's opening brief, Auditor Br. 12–16, Article III of the Constitution gives the General Assembly the power to alter and

prescribe duties among executive officials, N.C. Const. art. III, §§ 5(10), 7(2).

The Governor asks this Court to create new limits on this power outside of the Constitution's text. The Governor asserts the General Assembly's power under Article III, Sections 5(10) and 7(2) is constrained by a historical, undefined "people's" understanding of an office. This limitation is repugnant to the text and should be rejected out of hand.

The Governor roots this contention in his belief that our "Constitution continues to carve out a special place for the Governor among the State's many executive officials." Gov. Br. 14.² The Governor certainly has a unique role: the Governor tends to have a wide breadth of responsibilities, and indeed, he "wield[s] the bulk of what is considered executive authority." *Stein I*, 387 N.C. at 580 (Berger, J., concurring). Yet as the Supreme Court explained here, that is because "[a]ny unassigned and noninherent executive functions, powers, and duties fall to the Governor." *Id.* at 579. All this "unique role" means is the Governor operates as a catchall for un-delegated duties. It does not allow him to

² For additional support, the Governor cites to two amicus briefs submitted by former governors in *Stein Commissions* and another case. Gov. Br. 27, 29. It is hardly surprising that former governors would back the current officeholder's bid to keep power in the Governor's hands.

hoard power the General Assembly wants to place elsewhere. There is a reason our Constitution's provision on "[a]dministrative reorganization" is found in the Article III section titled "Duties of Governor." This placement reflects how the duties held by the Governor may be modified over time. N.C. Const. art. III, § 5(10).

Most fundamentally, the Governor's appeal to his "unique role" does not get him anywhere. Even if he is correct that he has a "special position atop the executive branch," Gov. Br. 15, he never explains *how* that role mandates he retain control over appointments to the State Board of Elections—an independent, statutorily-created entity—in particular. To the extent he believes he has a "unique role [to] ensur[e] the laws are faithfully executed," *id.*, which somehow necessitates he keep hold of Board appointments, he is mistaken. The Supreme Court explained in its order the duty to "take care that the laws be faithfully executed ... is a *nonexclusive duty conferred upon all ten Council of State members.*" *Stein I*, 387 N.C. at 578 n.4 (emphasis added). This Court adopted this same reasoning in *Stein Commissions*, 2025 WL 2919426 at *2, 8. In any event, it would make little sense for the Governor's role to allow him to consolidate power in that way. As the Auditor articulated in

his opening brief, Auditor Br. 25, it would be nonsensical to imagine a Constitution that prevented the General Assembly from *ever* reassigning a duty that had once been within the Governor’s purview—particularly where the General Assembly *would* otherwise be able to shift that duty between other Council of State members.

If the Governor believes he must retain Board appointment power because his office’s “original historical role” included Board oversight, Gov. Br. 18, he also overreads history. When the Board was first created, the General Assembly, not the Governor, had appointment authority. N.C. Sess. L. 1900-1, § 4, <https://dub.sh/Vm1n9g6> [App. 3]. Furthermore, the Board has not been housed administratively in the Governor’s office for more than fifty years. *See* N.C. Sess. L. 1971-864, § 4(5), <https://dub.sh/itK14Da> [App. 7]. Although governors have, at times, exercised some oversight of the Board, nothing in that history requires that they, and they alone, must do so.

B. The Constitution Does Not Constrain Council of State Officers’ Functions to Only Those Related to “Core Duties.”

Next, the Governor tries to manufacture another atextual requirement that a Council of State member may only be delegated

authority that is “sufficiently related” to one of that official’s “core duties.” Gov. Br. 16, 18. The Auditor has already explained why this position is wrong. *See* Auditor Br. 30–33.

To begin, the position finds no footing in precedent or our Constitution’s text. Although the Governor relies on *Martin v. Thornburg*, 320 N.C. 533, 546 (1987), to support his idea of “core functions,” that case says precisely nothing about *core* duties—it only discusses officers’ “differing functions and duties” at a high level. And in all events, tying an officer’s duties to his title would throw our executive system into disarray by inviting endless litigation around what is, and is not, an officer’s core purpose—and whether the particular duty at issue is sufficiently related to it.

Nor does Article III, Section 11 place any substantive limitations on Council of State officers’ duties. The Governor is simply mistaken to claim voters approved Section 11 “to make the responsibilities of elected executives more predictable and therefore make the executive branch more responsive to the people.” Gov. Br. 17–18. The pages of the Constitution Study Commission’s report the Governor cites for that proposition say no such thing. They instead confirm the provision was

added to “improv[e] the organizational and administrative effectiveness of the executive branch,” not to place limits on what duties could be allocated to whom. [Auditor Br. App. 65]. The history of that provision demonstrates it was a one-time event, with language enacted for organizational, not substantive, purposes. *See* Auditor Br. 30–33.

Left without any textual hook, the Governor claims that unless this Court accepts his conception of “core functions,” the sky will fall. He suggests if this Court sides with Appellants, the General Assembly could reassign any duty the Constitution has not already allocated to any of the Council of State officers, which he purports would “prevent[] [the executive] ... branch from performing its constitutional duties.” Gov. Br. 19, 27–28.

If the Governor’s concern is that the General Assembly might assign duties to an officer he thinks is ill-suited for them, that gives up the game. The legislature’s power does not vanish simply because it may choose to exercise that power in ways the Governor disfavors. What is more, that argument only underscores that the Governor’s challenge is ultimately centered on the General Assembly’s discretionary judgment, not any constitutional limitation.

Nor does the Governor's separation-of-powers argument make analytical sense. These powers remain with the executive branch even when the General Assembly reassigns responsibilities among executive officers. At most, there may be growing pains when duties change hands. But the executive branch, by definition, can never lose its ability to exercise its constitutional powers when the General Assembly merely transfers power from one executive official to another.

In the end, the Governor's argument is chockfull of hyperbole, designed to make this case something it is not. An intra-branch shift of appointment power over an independent elections board does not shift "final executive authority over implementation of the election laws," Gov. Br. 4, as implementation remains with the State Board and its staff. It does not establish "control [of] elections administration itself," or place the Auditor in the position of "administering elections," *id.* at 12, as the State Board still administers elections. Likewise, no Appellant is arguing that "any" power of the Governor can be transferred at "any" time. *Id.* at 2. That would violate constitutional text. Additionally, neither the Governor nor any other executive official with appointment power should be implementing "affirmative policy" over elections. *Id.* at 25. This

fearmongering about an imagined version of Senate Bill 382 lends no support to his constitutional challenge.

An intra-branch transfer of executive appointment power is authorized by Article III of the Constitution, and the Panel erred in finding any unconstitutionality in this transfer. This Court should reverse.

IV. In All Events, Board Oversight Aligns with the Auditor's Role.

Even if the Governor were right that the Constitution lets the General Assembly delegate only those functions that align with an officer's "core duties," the Auditor would still prevail. His core responsibilities have long centered on government accountability. Appointment authority over elections boards fits squarely within that function.

The Auditor acknowledges his office's duties were generally financial in nature in 1868, when the position was first created. *See* Gov. Br. 21 (making much of this idea). The point is, however, that the scope of his responsibilities expanded vastly and quickly. Auditor Br. 35. For some time now, the Auditor's duties have encompassed more generalized transparency functions, beyond just financial audits. *Id.* at 36.

In an attempt to undermine that conclusion, the Governor tries to point to two statutory provisions he claims show that Board oversight is incompatible with the Auditor's role. Those provisions say no such thing.

He first appeals to N.C.G.S. § 147-64.6. Although that provision lists the Auditor's "General Dut[ies]" as "the auditing and investigation of State agencies," N.C.G.S. § 147-64.6(a), that list is just that—a *general* summation of the Auditor's responsibilities. By no means is it an exhaustive one. And in any event, the more specific duties listed in subsection (c) of that provision make clear his office has been more than "primarily financial" for many years. Gov. Br. 22; *see* N.C.G.S. § 147-64.6(c)(16) ("receiving reports of allegations of ... improper governmental activities"), (22) (permitting the Auditor to conduct broad "[v]erification audits for compliance with statutory requirements"); *see Happel v. Guilford Cnty. Bd. of Ed.*, 387 N.C. 186, 193 (2025) ("A general or collective term" used near "a list of specific items is typically controlled ... by reference to the specific classes that precede it.").

The Governor next points to N.C.G.S. § 147-64.12 to support his claim that the Auditor is a bad fit to have appointment authority over the Board. That section provides that, in general, "[t]o preserve the

independence and objectivity of the audit function, the Auditor and his employees” cannot serve on any administrative board, commission, or like body that the Auditor’s Office has the authority to audit. *Id.* § 147-64.12(a). Nor can the Auditor “conduct an audit on a program or activity for which he ha[s] management responsibility.” *Id.* § 147-64.12(b). The Governor contends the Auditor’s general “role of review and examination is distinct from implementation of affirmative policy” as it relates to the Board. Gov. Br. 25.

But those sections, and the notion of implementing affirmative policy, only underscore why it makes perfect sense to shift only appointment power to the Auditor. The Board still retains its status as an independent entity. Auditor Br. 6; *see* N.C. Sess. L. 2024-57, § 3A.2.(a). Neither the Auditor nor his employees will serve on the Board—he simply makes appointments. And he, of course, does not have “management responsibility” over the operations or policy decisions of this long-independent Board. *See* N.C. Sess. L. 2024-57, § 3A.2(a) (“Under this transfer, the State Board of Elections shall exercise all its prescribed statutory powers independently of the State Auditor”).

Nor, as the Governor should well know, will the *Auditor* be the one implementing affirmative policy—the independent Board will. Senate Bill 382 fits perfectly within the scheme of independence our General Statutes already put in place for both the Auditor and the Board.

Still trying to cabin the Auditor’s permissible responsibilities, the Governor faults the Auditor because his role’s “expansion [has been] statutory, not constitutional.” Gov. Br. 24. Of course it would be a statutory expansion. With only limited exceptions, *all* of the Council of State’s duties are prescribed by law. N.C. Const. art. III, § 7(2). If mere statutory expansion is subject to challenge, then under the Governor’s view, it is not clear the General Assembly could expand a Council of State member’s duties at all.

Ultimately, this discussion illustrates it would be prohibitively difficult not only to define an official’s “core functions,” but also to decide whether any given duty fits neatly within them. The Governor’s proposed rule—that an executive officer’s duties must relate only to those core functions—is not only untethered from any constitutional text, but also unworkable in practice. It would violate all norms of constitutional

interpretation to disregard the plain and express terms of Article III, Sections 5(10) and 7(2), in favor of an atextual and impractical solution.

CONCLUSION

For all these reasons, this Court should reverse the Panel's Order and uphold the constitutionality of Senate Bill 382.

Respectfully submitted, this the 30th day of October, 2025.

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Certificate of Compliance

Pursuant to Rule 28(j) of the Rules of Appellate Procedure, undersigned counsel certifies that this brief, which was prepared using Century Schoolbook, a proportional font, is fewer than 3,750 words (excluding cover, indexes, tables of authorities, certificates of service, this certificate of compliance and appendixes) as reported by the word-processing software.

WARD AND SMITH, P.A.

/s/ Alex C. Dale
Alex C. Dale

Certificate of Service

I hereby certify that I have this day electronically filed a copy of the foregoing document with the Clerk of the North Carolina Court of Appeals and that I have served the foregoing by e-mailing a copy to counsel's correct and current email addresses as shown below:

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This the 30th day of October, 2025.

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From Wake County

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LAWS AND RESOLUTIONS

OF THE

STATE OF NORTH CAROLINA

PASSED BY THE

GENERAL ASSEMBLY

AT ITS

ADJOURNED SESSION

1900

BEGUN AND HELD IN THE CITY OF RALEIGH, TUESDAY THE
TWELFTH OF JUNE, NINETEEN HUNDRED

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1900

B

PUBLIC LAWS

OF THE

State of North Carolina.

ADJOURNED SESSION, 1900.

CHAPTER 1.

An act supplementary to an act entitled "An Act to Regulate Elections," Ratified March 6th, 1899—the same being chapter five hundred and seven of the Public Laws of 1899.

The General Assembly of North Carolina do enact:

That chapter 507, of Public Laws of 1899, entitled "An Act to Regulate Elections," ratified March 6, 1899, be amended to read as follows: Chapter 507, Public Laws 1899, amended.

SECTION 1. That on the first Thursday in August, in the year of our Lord one thousand nine hundred, and every four years thereafter, an election shall be held in the several election precincts in each county for the following officers: Governor, Lieutenant Governor, Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney-General, and other State officers whose terms last for four years, and at said time and every two years thereafter, elections shall be held in the several election precincts in each county for other State officers whose election is not otherwise provided for by law. And on the first Thursday in August, in the year aforesaid, and every two years thereafter, an election shall be held for Members of the General Assembly for their respective counties and districts, a Register of Deeds, County Surveyor, Coroner and Sheriff for their respective counties, and county commissioners, where the county commissioners are elected by the people; and in such counties as have one, a County Treasurer, and other county officers whose terms are for two years. Time of holding elections for State officers.

SEC. 2. That on the first Thursday in August, in the year of our Lord one thousand nine hundred and two, and on said date every four years thereafter, an election shall be held in each county for the office of Clerk of the Superior Court, and at such times elections shall be held in the several Judicial Districts of the State for the office of Solicitor. Election of members of general assembly and county officers.

Election for Clerk of Superior Court and Solicitor.

Election for constables and justices of the peace.	SEC. 3. That on the first Thursday in August, in the year of our Lord one thousand nine hundred, and on said dates every two years thereafter, an election shall be held in each township for the offices of Constable and Justice of the Peace, in such counties as elect them by a vote of the people, and other officers elected by a vote of the township.
State Board of elections created.	SEC. 4. That there shall be a State Board of Elections, consisting of seven discreet persons, who shall be electors, elected by the General Assembly at its present session, and whose term of office shall continue until the next regular meeting of the General Assembly, in the year one thousand nine hundred and one, and until their successors are elected and qualified. And the Legislature shall biennially at its regular sessions thereafter elect seven discreet persons, who shall be electors, to constitute said Board.
How elected.	
County board of elections.	SEC. 5. That there shall be in every county in the State a County Board of Elections, to consist of three discreet persons, who are electors in the county in which they are to act, who shall be appointed by the State Board of Elections, at least three months before the next general State election, and biennially thereafter, and whose term of office shall continue for two years from the time of their appointment and until their successors are elected and qualified, unless sooner removed therefrom as hereinafter provided.
How appointed.	
Term of office.	
Meeting of state board of elections.	SEC. 6. That the State Board of Elections shall meet in the city of Raleigh on the first Monday in May, one thousand eight hundred and ninety-nine, and organize by electing one of their number chairman and another secretary. And any vacancy occurring in said Board during a recess of the Legislature shall be filled by the remaining members of said Board, and the person so chosen shall remain in office until the end of the term of office of the person in whose stead he was chosen. The State Board of Elections shall meet in Raleigh on the first Monday in April in each year in which there is to be held a general election, and the chairman
Vacancies occurring.	
Annual meetings of said board.	
Special meetings.	of said Board may call such special meetings of said Board as may be necessary to discharge the duties and functions imposed upon the Board by this Act, at such times and places as he may appoint. And the members of the said Board shall each receive in full compensation for their services four dollars per day, for the time they are actually engaged in the discharge of their duties, together with their actual travelling expenses, and such other expenses as are necessary and incident to the discharge of the duties imposed by this Act, to be paid by the Treasurer of the State upon the warrant of the Auditor: <i>Provided, that</i>
Compensation of members of board.	
To be paid by treasurer. Proviso.	

the chairman shall call a meeting of the Board upon the application in writing of any two members thereof, or if there be no chairman, or the chairman does not call such meeting any three members of the said Board shall have power to call a meeting of the Board. And any duty imposed, or power conferred, by this Act may be performed or exercised at such meeting although the time for performing or exercising the same prescribed by this Act may have expired.

Chairman shall call meeting on application of two members. Any three members may call meeting. Any duty may be performed.

SEC. 7. That it shall be the duty of the County Board of Elections in each county to appoint all registrars and judges of election in their respective counties.

County boards shall appoint registrars and judges.

SEC. 8. That the State Board of Elections shall have power to remove from office any member of the County Board of Elections for incompetency, failure of duty, or for any other satisfactory cause. When any member of the County Board of Elections shall be removed by the State Board of Elections, the vacancy thus created shall be filled by the State Board of Elections. Vacancies occurring in the County Board of Elections, for other cause than removal by the State Board of Elections, shall be filled by the remaining members thereof.

Members of county board may be removed by state board.

Vacancies, how filled.

SEC. 9. That the County Board of Elections shall have power to remove any registrar or judge of election appointed by them, for incompetency, failure to qualify within the time prescribed by law, failure to discharge the duties of office after qualifying, or for any other satisfactory cause. That if any member of the County Board of Elections, or any registrar or judge of election, after having been removed as hereinbefore provided, and notified thereof, shall continue to exercise the duties of the position from which he has been removed, he shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars or imprisoned not more than thirty days.

Registrars and judges may be removed by county board.

Misdemeanor to exercise duties after removal.

SEC. 10. That it shall be the duty of the County Board of Elections to meet in their respective counties not later than the first Monday in May, in the year of our Lord one thousand nine hundred, and biennially thereafter, and at such other times and places as the chairman of said Board or any two members thereof may direct, and after organizing by electing one of their number chairman and another secretary, to divide their respective counties into election precincts and fix the places of polling in the several election precincts. They may adopt the present division of their county into election precincts, or they may establish entirely new precincts, or they may alter the present precincts, but the election precincts and precinct polling places as now fixed in each county shall remain as they now are, until altered.

Meeting of county board.

Division of county into precincts.

NORTH CAROLINA GENERAL ASSEMBLY
1971 SESSION

CHAPTER 864
HOUSE BILL 863

AN ACT TO REORGANIZE STATE GOVERNMENT.

The General Assembly of North Carolina enacts:

Organization

Section 1. (1) Short title. — This act shall be known and may be cited as the "Executive Organization Act of 1971."

(2) Head of department; defined. — Whenever the term "Head of the Department" is used it shall mean the head of one of the principal departments created by this act.

(3) Agency; defined. — Whenever the term "Agency" is used it shall mean and include, as the context may require, an existing department, institution, commission, committee, board, division, bureau, officer or official.

(4) Policy making authority and administrative powers of Governor; delegation. — The Governor, in accordance with Article III of the Constitution of North Carolina, shall be the Chief Executive Officer of the State. Subject to the Constitution and laws of this State, the Governor shall be responsible for formulating and administering the policies of the executive branch of the State government. Where a conflict arises in connection with the administration of the policies of the executive branch of the State government with respect to the reorganization of State government, such conflict shall be resolved by the Governor, and the decision of the Governor shall be final.

(5) Office of the Lieutenant Governor. — The Lieutenant Governor shall maintain an office in a State building in the City of Raleigh which office shall be open during normal working hours throughout the year. The Lieutenant Governor shall serve as President of the Senate and perform such additional duties as the Governor or General Assembly may assign to him. This subsection shall become effective January 1, 1973.

(6) Types of transfers. — (a) Under this act, a Type I transfer means the transferring of all or part of an existing agency to a principal department established by this act. When all or part of any agency is transferred to a principal department under a Type I transfer, its statutory authority, powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and purchasing, are transferred to the principal department.

When any agency, or part thereof, is transferred by a Type I transfer to a principal department under the provisions of this act, all its prescribed powers, duties, and functions, including but not limited to rule making, regulation, licensing, and promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications are transferred to the head of the principal department into which the agency, or part thereof, has been transferred.

(b) Under this act, a Type II transfer means the transferring intact of an existing agency, or part thereof, to a principal department established by this act. When any agency, or part thereof, is transferred to a principal department under a Type II transfer, that agency, or part thereof, shall be administered under the direction and supervision of that principal department, but shall exercise all its prescribed statutory powers independently of the head of the principal department, except that under a Type II transfer the management functions of any transferred

agency, or part thereof, shall be performed under the direction and supervision of the head of the principal department.

(c) Whenever the term "management functions" is used it shall mean planning, organizing, staffing, directing, coordinating, reporting and budgeting.

(7) Agencies not enumerated; continuation. — Any existing department, institution, board or commission not enumerated in this act but established or created by the General Assembly shall continue to exercise all its powers, duties and functions.

(8) Internal organization of departments; allocation and reallocation of duties and functions; limitations. — The Governor shall cause the administrative organization of each department to be examined with a view to promoting economy and efficiency.

The Governor may reorganize and organize the principal departments and assign and reassign the duties and functions among the divisions and other units, division heads, officers, and employees; except as otherwise expressly provided by statute.

When such changes affect existing law they must be submitted in accordance with Article III, Section 5 of the Constitution. The head of a principal department shall have legal custody of all books, papers, documents and other records of the department. The head of a principal department shall be responsible for the preparation and presentation of the department budget request which shall include all funds requested and all receipts expected for all elements of the department.

(9) Appointment of officers and employees. — Any provisions of law to the contrary notwithstanding, and subject to the provisions of the Constitution of the State of North Carolina, the head of a principal department, except those departments headed by elected officials who are constitutional officers, shall be appointed by the Governor and serve at his pleasure. The salary of the head of each of the principal departments, except in those departments headed by elected officials who are constitutional officers, shall be set by the Advisory Budget Commission on the recommendation of the Governor. Salaries for these positions shall be filed with the General Assembly pursuant to G.S. 143-34.3 commencing with the 1973 General Assembly.

The head of a principal department shall appoint the Chief Deputy or Chief Assistant and such Chief Deputy or Chief Assistant shall be subject to the State Personnel Act. Except where appointment by the Governor is prescribed by existing statute, the head of the principal department shall appoint the administrative head of each transferred agency and, subject to the provisions of the State Personnel Act, appoint all employees of each division, section or other unit under a principal department. In establishing the position of Secretary, and the supporting staff for the principal departments, the cost of such staff positions will be met insofar as possible by utilizing existing positions or funds available from vacant positions within agencies assigned to the principal departments.

(10) Governor; continuation of powers and duties. — All powers, duties and functions vested by law in the Governor or in the Office of Governor are continued, except as otherwise provided by this act.

The immediate staff of the Governor shall not be subject to the State Personnel Act; however, salaries for these positions shall be filed with the General Assembly pursuant to G.S. 143-34.3 commencing with the 1973 General Assembly.

(11) Principal departments. — Except as otherwise provided by this act, or the State Constitution, all executive and administrative powers, duties and functions, not including those of the General Assembly and the judiciary, previously vested by law in the several State agencies, are vested in the following principal offices or departments.

- (1) Office of the Governor
- (2) Office of the Lieutenant Governor
- (3) Department of the Secretary of State
- (4) Department of State Auditor

- (5) Department of State Treasurer
- (6) Department of Public Education
- (7) Department of Justice
- (8) Department of Agriculture
- (9) Department of Labor
- (10) Department of Insurance
- (11) Department of Administration
- (12) Department of Transportation and Highway Safety
- (13) Department of Natural and Economic Resources.
- (14) Department of Human Resources
- (15) Department of Social Rehabilitation and Control
- (16) Department of Commerce
- (17) Department of Revenue
- (18) Department of Art, Culture and History.
- (19) Department of Military and Veterans' Affairs

Sec. 2. Office of the Governor; creation. — There is hereby created an Office of the Governor.

Sec. 3. Office of the Lieutenant Governor; creation. — There is hereby created an Office of the Lieutenant Governor.

Department of the Secretary of State

Sec. 4. (1) Department of the Secretary of State; creation. — There is hereby created a Department of the Secretary of State.

(2) Head of Department. — The Head of the Department of the Secretary of State is the Secretary of State.

(3) Secretary of State; transfer of powers and duties to Secretary. — The Secretary of State shall have such powers and duties as are conferred on him by Section 1 of this act, delegated to him by the Governor, and conferred by the Constitution and laws of this State.

(4) Secretary of State; transfer of powers and duties to Department. — Except as otherwise provided in the Constitution or in this act, all powers, duties and functions vested by law in the Secretary of State are transferred by a Type I transfer to the Department of the Secretary of State.

(5) The State Board of Elections; transfer. — The State Board of Elections, as contained in Article 3 of Chapter 163 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of the Secretary of State.

(6) Notaries public; powers, duties and functions; transfer. — All of the powers, duties and functions of the Governor under G.S. 10-1 of the General Statutes are transferred by a Type I transfer to the Department of the Secretary of State.

Department of State Auditor

Sec. 5. (1) Department of State Auditor; creation. — There is hereby created a Department of State Auditor.

(2) Head of Department. — The head of the Department of the State Auditor is the State Auditor.

(3) State Auditor; transfer of powers and duties to State Auditor. — The State Auditor shall have such powers and duties as are conferred on him by Section 1 of this act, delegated to him by the Governor, and conferred by the Constitution and laws of this State.

(4) State Auditor; transfer of powers and duties to Department. — Except as otherwise provided in the Constitution or by this act, all powers, duties and functions of the State Auditor are transferred by a Type I transfer to the Department of the State Auditor.

(5) North Carolina Firemen's Pension Fund; transfer. — The North Carolina Firemen's Pension Fund, as contained in Article 3 of Chapter 118 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of State Auditor.

(6) The Law Enforcement Officers' Benefit and Retirement Fund; transfer. — The Law Enforcement Officers' Benefit and Retirement Fund, as contained in Article 12 of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of State Auditor.

(7) State Board of Pensions; transfer. — The State Board of Pensions, as contained in Article 2 of Chapter 112 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of State Auditor.

Department of State Treasurer

Sec. 6. (1) Department of State Treasurer; creation. — There is hereby created a Department of State Treasurer.

(2) Head of Department. — The head of the Department of State Treasurer is the State Treasurer.

(3) State Treasurer; transfer of powers and duties to State Treasurer. — The State Treasurer shall have such powers and duties as are conferred on him by Section 1 of this act, delegated to him by the Governor, and conferred by the Constitution and laws of this State.

(4) State Treasurer; transfer of powers and duties to Department. — Except as otherwise provided in the Constitution or in this act, all powers, duties and functions vested by law in the State Treasurer are transferred by a Type I transfer to the Department of State Treasurer.

(5) Local Government Commission; transfer. — The Local Government Commission, as contained in Article 1 of Chapter 159 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of State Treasurer.

(6) Teachers' and State Employees' Retirement System; transfer. — The Teachers' and State Employees' Retirement System, and the Board of Trustees, as contained in Article 1 of Chapter 135 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of State Treasurer.

(7) North Carolina Local Governmental Employees' Retirement System; transfer. — The North Carolina Local Governmental Employees' Retirement System, as contained in Article 3 of Chapter 128 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of State Treasurer.

(8) Public Employees' Social Security Agency; powers, duties and functions; transfer. — All of the powers, duties and functions of the Public Employees' Social Security Agency as contained in Article 2 of Chapter 135 of the General Statutes and the laws of this State, are transferred by a Type I transfer to the Department of State Treasurer.

(9) Legislative Retirement Fund; transfer. — The Legislative Retirement Fund, as provided for in G.S. 120-4.1 of the General Statutes and the laws of this State, is hereby transferred by a Type II transfer to the Department of State Treasurer.

(10) The Tax Review Board; transfer. — The Tax Review Board, as created by G.S. 105-269.2 of the General Statutes and the laws of this State, is transferred by a Type II transfer to the Department of State Treasurer.

Department of Public Education

Sec. 7. (1) Department of Public Education; creation. — There is hereby created a Department of Public Education.

(2) Head of Department. — Head of the Department of Public Education is the State Board of Education. Any provision of Section 1, Subsection (9) of this act to the contrary