



HOUSE BILL 17: Modify Certain Appts/Employment.

2015-2016 General Assembly

Committee: Senate Appropriations/Base Budget	Date: December 16, 2016
Introduced by: Reps. Lewis, Bryan, Horn, Ross	Prepared by: Drupti Chauhan and Kara McCraw
Analysis of: Fourth Edition	Staff Attorney

OVERVIEW: *The 4th Edition of House Bill 17 makes various changes to the laws pertaining to the Superintendent of Public Instruction; the appointments process for the boards of trustees for the constituent institutions of The University of North Carolina; the appointments of heads of principal State departments; and to establish a task force for safer schools.*

PART I. CLARIFY ROLES/DPI/SBE

SECTIONS 1 and 31.

CURRENT LAW: G.S. 115C-11 sets forth the organization and internal procedures of the State Board of Education (SBE), including the process of advisory appointments.

BILL ANALYSIS: Section 1:

- Authorizes the Superintendent of Public Instruction (Superintendent) instead of the Governor to appoint the student advisors and local superintendent advisor to the SBE.
- Adds an additional provision to require the Superintendent to provide technical assistance and administrative assistance to the SBE through the Department of Public Instruction (DPI), except for 4 designated positions under the SBE.

Section 31 provides that the current advisors in these positions can serve the remainder of their terms.

SECTION 2.

CURRENT LAW: G.S. 115C-12 provides for the general powers and duties of the SBE.

BILL ANALYSIS: This section adds language to clarify that the Superintendent, through DPI, must administer all needed rules and regulations adopted by the SBE.

SECTION 3.

CURRENT LAW: G.S. 115C-19 describes the Superintendent's role as the chief administrative officer of the SBE. It describes the Superintendent's role to manage "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" and carry out the duties of the Superintendent "subject to the direction, control, and approval of the State Board of Education."

BILL ANALYSIS: This section removes language subordinating the Superintendent to the SBE, and instead adds language that the Superintendent is an elected officer and Council of State member and is the administrative head of DPI.

SECTION 4.

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Legislative Analysis
Division
919-733-2578

House Bill 17

Page 2

CURRENT LAW: G.S. 115C-21 describes the powers and duties of the Superintendent. It states that these powers and duties are "[s]ubject to the direction, control, and approval of the State Board of Education."

BILL ANALYSIS: This section does the following:

- Removes any references to the Superintendent's powers and duties being subject to the SBE.
- Adds authority to the State Superintendent to administer DPI's funds in accordance with all needed rules and regulations adopted by the State Board of Education and enter contracts for the operation of DPI.
- Establishes that all staff of DPI are under the management of the Superintendent except for the four designated positions appointed by the SBE.
- Provides that the Superintendent, rather than SBE, will administer any special funds within DPI which were received as grants from nongovernmental sources in accordance with G.S. 115C-410.
- Adds new language that all matters related to providing staff services, except for the four designated SBE positions, and support to the SBE, including implementation of federal programs on behalf of the SBE, are under the direction and control of the Superintendent.
- Specifies that as secretary to the SBE, the Superintendent must administer funds appropriated for the operations of the SBE and for aid to local school administrative units.

SECTION 5.

CURRENT LAW: G.S. 115C-408 covers the funds under control of the SBE, and provides that the SBE is charged with the "general supervision and administration of the educational funds" other than those specifically provided in the State Constitution and local funds.

BILL ANALYSIS: This section adds that the Superintendent shall administer any available educational funds through DPI in accordance with all rules and regulations adopted by the SBE.

SECTION 6.

CURRENT LAW: Under Section 5 of Article IX of the State Constitution, the SBE must supervise and administer the educational funds provided for the support of the public school system and it must make all needed rules and regulations regarding those funds, subject to the laws enacted by the General Assembly. G.S. 115C-410 allows the SBE to accept gifts and grants and other forms of voluntary contributions and use those monies or reallocate those monies to the local school administrative units.

BILL ANALYSIS: This section amends the statute to provide that the SBE is authorized to adopt all needed rules and regulations for the creation and administration of special funds within DPI to manage any funds received as grants from nongovernmental sources in support of public education. It then provides that, in accordance with the SBE's rules and regulations, the Superintendent is authorized to create and administer such special funds, to accept gifts and grants, and use those gifts and grants or reallocate those funds to the local school administrative units.

SECTION 7.

CURRENT LAW: G.S. 126-5(d) describes the positions that can be exempted from the North Carolina Human Resources Act (NCHRA).

BILL ANALYSIS: Section 7 amends G.S. 126-5(d) as follows:

- Decreases from 1500 to 300 the number of positions the Governor may designate as exempt throughout the Cabinet departments and offices.

House Bill 17

Page 3

- Removes the Office of State Budget and Management and the Office of State Human Resources from the list of cabinet departments and offices with exempt positions designated under this subsection.
- Increases the number of positions 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 as exempt to:
 - 25 exempt policymaking positions, or 2% of the total number of full-time positions, whichever is greater, and
 - 25 exempt managerial positions, or 2% of the total number of full-time positions in the department, whichever is greater.
- Increases the number of positions the State Board of Education may designate as exempt to:
 - 70 exempt policymaking positions, or 2% of the total number of full-time positions, whichever is greater, and
 - 70 exempt managerial positions, or 2% of the total number of full-time positions in the department, whichever is greater.
- Provides that if a Cabinet position designated as exempt from the NCHRA under this subsection is changed to subject to the NCHRA and the employee occupying the position has been continuously employed in a permanent position for the immediate 12 preceding months, the employee is deemed a career State employee, as defined in G.S.126-1.1(a), upon the effective date of the change in designation.

This section becomes effective when it becomes law.

SECTION 8.

CURRENT LAW: G.S. 126-5(d) describes the positions that can be exempted from the North Carolina Human Resources Act. It provides that the SBE may designate certain positions as exempt in DPI.

BILL ANALYSIS: Section 8 provides that the Superintendent will designate exempt positions, rather than the SBE, beginning January 1, 2017.

SECTION 9.

CURRENT LAW: G.S. 143-745 provides the definitions applicable to State agency internal auditing programs. The SBE is designated as the head of DPI.

BILL ANALYSIS: This section changes the designation of the head of DPI from the SBE to the Superintendent.

SECTIONS 10-12.

CURRENT LAW: Article 5 of Chapter 143A of the General Statutes creates DPI and provides that the head of DPI is the SBE.

BILL ANALYSIS: These sections provide that the Superintendent will be the head of DPI and have all the powers and duties conferred by the Constitution, the various statutes, and delegated to the Superintendent by the Governor and SBE.

SECTION 13.

CURRENT LAW: G.S. 14-234 generally prohibits public officers and employees who are involved in the making or administration of a contract from deriving a direct benefit from the contract. Subsection (d6) of that statute exempts employment contracts between the SBE and its chief executive officer.

BILL ANALYSIS: This section repeals subsection (d6).

House Bill 17

Page 4

SECTIONS 14-15.

CURRENT LAW: The Achievement School District (ASD) is under the administration of the SBE and the ASD Superintendent Selection Advisory Committee makes recommendations to the SBE on the appointment of a superintendent of the ASD. The SBE makes the final selection of the ASD superintendent who serves at the pleasure of the SBE.

BILL ANALYSIS: These sections place the ASD under the administration of the SBE and the Superintendent. In addition, the ASD Superintendent Selection Advisory Committee is repealed. The Superintendent would select the ASD superintendent who would serve at the pleasure of the Superintendent. The salary of the ASD superintendent would be established by the Superintendent rather than the SBE and reporting would be directly to the Superintendent as well.

SECTION 16.

CURRENT LAW: G.S. 115C-150.11 provides that the SBE is the sole governing agency for the School for the Blind and the Schools for the Deaf.

BILL ANALYSIS: This section clarifies that the Superintendent, through DPI, is responsible for the administration, appointment of staff, and oversight of these schools.

SECTIONS 17-18 and 32.

CURRENT LAW: Sections 17-18 address the charter school statutes and membership on the North Carolina Charter Schools Advisory Board (Advisory Board) and civil liability regarding the acts and omissions of charter schools. The Governor currently appoints 3 members of the Advisory Board, including the chair. These sections also set forth the administrative control of the Office of Charter Schools.

BILL ANALYSIS: Sections 17-18 remove the Governor's appointing authority to the Advisory Board and gives the House of Representatives, the Senate, and the SBE each 1 additional member to appoint. The Advisory Board would annually elect the chair of the Advisory Board from among its membership. These sections remove language that provide that the Office of Charter Schools would be "subject to the supervision, direction, and control" of the SBE. The executive director would be appointed by the Superintendent who would also set the salary. The executive director of the Office of Charter Schools would report to and serve at the pleasure of the Superintendent rather than the SBE.

Finally, these sections add the Superintendent to the list of entities that are protected from any civil liability for any acts or omissions of a charter school.

Section 32 provides that the current members of the Advisory Board can serve the remainder of their terms.

SECTIONS 19-23 and 26-27.

CURRENT LAW and BILL ANALYSIS: These sections make conforming changes to add the Superintendent to the list of entities that cannot be held liable for negligence for actions in the following areas: criminal history checks, personnel evaluations, and use of reasonable force.

SECTION 24.

BILL ANALYSIS: This section would provide that the School Planning Division is a part of DPI rather than the SBE.

SECTION 25.

CURRENT LAW and BILL ANALYSIS: The SBE is authorized to manage and operate a system of insurance for public school property. This section places the Superintendent in charge of the system of

House Bill 17

Page 5

insurance for public school property, which is to be done in accordance with rules and regulations adopted by the SBE. The Superintendent is to employ the personnel rather than the SBE.

SECTION 28.

BILL ANALYSIS: This section changes the 2015 Appropriations Act by providing that DPI must implement budget reductions and provide an organizational chart rather than the SBE. The Superintendent would not need approval from the SBE to make position reductions but must still follow any rules and regulations from the SBE relating to funds and programs administered by DPI that could be impacted by funding reductions.

SECTION 29.

BILL ANALYSIS: The SBE must revise any rules and regulations to comply with this legislation by May 15, 2017.

SECTION 30.

BILL ANALYSIS: This section requires DPI to review State laws, rules, and regulations to ensure compliance with the intent of this legislation and to report to the General Assembly by April 15, 2017 on the results of its review.

EFFECTIVE DATE: Sections 1-6 and Sections 8-32 become effective January 1, 2017. The remainder of this Part becomes effective when it becomes law.

PART II. MODIFY APPOINTMENT OF UNC BOARDS OF TRUSTEES

SECTIONS 35-37.

CURRENT LAW: The board of trustees of the constituent institutions of The University of North Carolina are composed of 13 individuals: 8 appointed by the Board of Governors, 4 appointed by the Governor, and the president of the student government. The Board of Trustees for the North Carolina School of Science and Mathematics (NCSSM) is composed of 30 individuals, including 2 members appointed by the General Assembly upon the recommendation of the Speaker of the House, 2 members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and 2 members appointed by the Governor.

BILL ANALYSIS: Section 35 would eliminate appointments by the Governor to the constituent institution boards of trustees and require that the General Assembly appoint 4 members to each board, with 2 members recommended by the Speaker of the House of Representatives, and 2 members recommended by the President Pro Tempore of the Senate.

Section 36 would also eliminate appointments by the Governor to the NCSSM board of trustees and require that the General Assembly appoint 6 members to each board, with 3 members recommended by the Speaker of the House of Representatives, and 3 members recommended by the President Pro Tempore of the Senate.

Members holding office as of the effective date of the bill would complete their term. Vacancies originally appointed by the Governor would be filled by joint recommendation of the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

EFFECTIVE DATE: This Part would become effective when it becomes law and applies to terms expiring January 15, 2017, and thereafter.

House Bill 17

Page 6

PART III. SENATE CONFIRMATION OF CABINET APPOINTEES **SECTIONS 38-39.**

CURRENT LAW: G.S. 143B-9 provides that the head of each principal State department that is not popularly elected is appointed by the Governor and serve at the Governor's pleasure. These departments are established in G.S. 143B-6 as follows: Department of Natural and Cultural Resources, Department of Health and Human Services, Department of Revenue, Department of Public Safety, Department of Environmental Quality, Department of Transportation, Department of Administration, Department of Commerce, Community Colleges System Office, Department of Information Technology, and the Department of Military and Veterans Affairs.

The North Carolina Constitution provides in Article III, Sec. 5(8) that the Governor shall "nominate and by and with the advice and consent of a majority of the Senators appoint all officers whose appointments are not otherwise provided for."

BILL ANALYSIS: This section would require the Governor to notify the Senate of the name of each person nominated to be the head of a principal State department, and the appointment would be subject to the advice and consent of the Senate unless one of the following occurs:

- The senatorial advice and consent is expressly waived by an enactment of the General Assembly.
- A vacancy occurs when the General Assembly is not in regular session. Any person appointed 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:
 - The date the Senate adopts a simple resolution specifically disapproving the person appointed.
 - The date the General Assembly adjourns by joint resolution for a period of longer than 30 days without adoption by the Senate of a simple resolution approving that person.

EFFECTIVE DATE: This Part would become effective when it becomes law.

PART IV. ESTABLISH TASK FORCE FOR SAFER SCHOOLS AND TRANSFER CENTER FOR SAFER SCHOOLS **SECTION 41.**

BILL ANALYSIS: This section transfers the Center for Safer Schools to DPI. It also establishes a Task Force for Safer Schools that has 25 members with various appointees. The duties of the Task Force include serving as an advisory board to the Center for Safer Schools and encouraging interagency collaboration.

EFFECTIVE DATE: This Part would become effective when it becomes law.

PART V. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 42. This section provided that each provision of the act are severable, and that if any provision is held invalid, it does not affect the remaining provisions that can be given affect without that provision.

EFFECTIVE DATE: Except as otherwise provided, HB 17 would become effective when it becomes law.