



HOUSE BILL 90: Changes to Education and Elections Laws.

2017-2018 General Assembly

Committee:	House Appropriations	Date:	February 8, 2018
Introduced by:	Reps. Elmore, K. Hall, Hurley	Prepared by:	Brian Gwyn Staff Attorney
Analysis of:	Conference Committee Substitute (H90-CCSTC-5)		

OVERVIEW: *The Conference Committee Substitute to House Bill 90 would delete the contents of the 3rd edition of House Bill 90 and replace it with provisions that would do the following:*

- *Ensure local school administrative units ("LEAs") in counties impacted by the ACP are the sole recipients of the funds that are the subject of the Memorandum of Understanding associated with the ACP*
- *Phase in class size requirements over a four-year time period*
- *Create an allotment category for kindergarten through fifth grade program enhancement teachers separate from the classroom teacher allotment*
- *Authorize local boards of education to transfer positions from the program enhancement allotment to the classroom teacher allotment*
- *Starting in 2021, allow program enhancement teachers for kindergarten through fifth grade to only be funded by the program enhancement allotment*
- *Phase in an appropriation for kindergarten through fifth grade program enhancement teachers over a period of four years*
- *Modify eligibility criteria for personal education savings accounts (PESAs)*
- *Establish a statutory appropriation for NC Pre-K*
- *Make changes to the Bipartisan State Board of Elections and Ethics Enforcement (State Board)*

PART I: ACP/MOU/ADDITIONAL FUNDING FOR PUBLIC SCHOOLS

BILL ANALYSIS: Part I establishes parameters that must be met in order for any State or local officer to accept or use moneys covered by the Memorandum of Understanding entered between the Governor and the ACP, LLC, entity ("MOU"). Subsection (a) provides that the purpose of the section is to ensure local school administrative units ("LEAs") in ACP-affected counties receive funds provided by entities involved in the construction of the ACP and clarifies that any mitigation costs for streams, buffers, and wetlands have already been accounted for through the 401 certification process.

Subsection (b) narrows the scope of the use of funds contemplated in the MOU and makes acceptance or use of the funds contingent on uses consistent with subsection (c) of the section.

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Subsection (c) requires the funds to be allocated solely to the LEAs through which the ACP runs. The amount to be received by each LEA is the sum of two factors. Half is given in proportion to each LEA's ADM, and half is given in proportion to each ACP-affected county's linear miles. If more than one LEA is located in a county through which the ACP runs, the linear ACP miles allocation for that county is divided among the county's LEAs pro rata based on ADM. The anticipated amounts to be received by LEAs in the State, based on the assumption that the funds received will be equal to \$57.8M, is as follows:

Pipeline Counties	Allocation based on ADM			Allocation based on Pipeline Mileage			Total
	FY 2017-18 Allotted ADM	% of Total ADM	Amount	Pipeline Miles	% of Total	Amount	
Cumberland	50,485	32.4%	\$ 9,365,097	39 miles	19.9%	\$ 5,750,510	\$15,115,607
Halifax	2,593	1.7%	\$ 481,008	24 miles	12.2%	\$ 1,439,831	\$ 1,920,839
Roanoke Rapids	2,912	1.9%	\$ 540,183			\$ 1,616,964	\$ 2,157,148
Weldon City	868	0.6%	\$ 161,016			\$ 481,980	\$ 642,996
Johnston	35,272	22.6%	\$ 6,543,046	37 miles	18.9%	\$ 5,455,612	\$11,998,658
Nash	15,253	9.8%	\$ 2,829,471	32 miles	16.3%	\$ 4,718,367	\$ 7,547,838
Northampton	1,783	1.1%	\$ 330,751	22 miles	11.2%	\$ 3,243,878	\$ 3,574,629
Robeson	23,185	14.9%	\$ 4,300,877	22 miles	11.2%	\$ 3,243,878	\$ 7,544,754
Sampson	8,358	5.4%	\$ 1,550,430	8 miles	4.1%	\$ 865,890	\$ 2,416,321
Clinton City	3,028	1.9%	\$ 561,702			\$ 313,701	\$ 875,403
Wilson	12,056	7.7%	\$ 2,236,419	12 miles	6.1%	\$ 1,769,388	\$ 4,005,807
Total	155,793	100.00%	\$ 28,900,000	196 miles	100%	\$ 28,900,000	\$ 57,800,000

Total Amount in Escrow = \$57,800,000

Subsection (d) requires school unit reporting to DPI on receipt of funds and requires DPI to collate the information and submit it to GovOps quarterly beginning September 1, 2018, until such time as all funds covered by the MOU have been received by the LEAs.

The remaining subsections address potential conflict issues and provide for severability.

PART II: CLASS SIZE PHASE IN

CURRENT LAW: G.S. 115C-301(c) prohibits the average class size for kindergarten through third grade classes in an LEA from exceeding the funded allotment ratio. Individual kindergarten through third grade classes may not exceed the allotment ratio by more than three students. The funded class size allotment ratio for kindergarten through third grade is defined as the following:

- For kindergarten, one teacher per 18 students.
- For first grade, one teacher per 16 students.
- For second grade, one teacher per 17 students.
- For third grade, one teacher per 17 students.

S.L. 2017-9 phased in class size requirements for kindergarten through third grade as follows:

- For the 2017-2018 school year, the average class size for kindergarten through third grade in an LEA cannot exceed 20 students, and the size of an individual class in kindergarten through third grade cannot exceed 23 students.

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- For the 2018-2019 school year and thereafter, the class size requirements in G.S. 115C-301 apply.

BILL ANALYSIS: Part II would phase in the class size requirements of G.S. 115C-301 over a four year period rather than the two year period outlined in S.L. 2017-9 as follows:

- For the 2017-2018 and 2018-2019 school years, the average class size for kindergarten through third grade classes in an LEA would be 20 students. An individual class could not exceed 23 students.
- For the 2019-2020 school year, the average class size for kindergarten through third grade could be no more than 19 students. An individual class could not exceed 22 students.
- For the 2020-2021 school year, the average class size for kindergarten through third grade could be no more than 18 students. An individual class could not exceed 21 students.
- For 2021-2022 and beyond, the class size requirements would be as set forth in G.S. 115C-301.

PART III: PROGRAM ENHANCEMENT TEACHER ALLOTMENT

CURRENT LAW: Sec. 1(a)(2) of S.L. 1995-450 collapsed allotment categories for various types of teachers into one classroom teacher allotment.

BILL ANALYSIS: Part III would repeal Sec. 1(a)(2) of S.L. 1995-450 and create an allotment category for kindergarten through fifth grade program enhancement teachers separate from the allotment category for classroom teachers. The allotment ratio would be one program enhancement teacher for every 191 students. "Program enhancement" would be defined as:

- Arts disciplines, including dance, music, theater, and the visual arts.
- Physical education and health programs.
- World languages.
- Other supplemental classes as defined by the State Board of Education.

Until July 1, 2021, the classroom teacher allotment could be used for any type of classroom teacher, including a kindergarten through fifth grade program enhancement teacher. After that date, funds for program enhancement teachers for kindergarten through fifth grade would only be allotted through the program enhancement teacher allotment.

Class size requirements for kindergarten through third grade would not apply to program enhancement classes.

PART IV: ALLOTMENT TRANSFER RESTRICTIONS

CURRENT LAW: G.S. 115C-105.25 authorizes local boards of education to convert positions allocated for classroom teachers to dollar equivalents at a rate equal to the first salary step for teachers on the "A" Teachers Salary Schedule. However, positions can be converted to dollar equivalents at a rate equal to the statewide average salary for classroom teachers, including benefits, to contract with visiting international exchange teachers.

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BILL ANALYSIS: Part IV would restrict transfers out of the program enhancement for kindergarten through fifth grade teacher allotment, with the exception that the positions could be converted from program enhancement to classroom teachers. Starting July 1, 2021, positions could not be transferred out of the classroom teacher allotment, except to contract with visiting international exchange teachers.

PART V: APPROPRIATIONS FOR PROGRAM ENHANCEMENT TEACHERS

BILL ANALYSIS: Part V would appropriate \$61,359,225 from the unappropriated fund balance of the General Fund for the purpose of funding the program enhancement allotment for kindergarten through fifth grade teachers. This appropriation represents 25% of the funding required for the program enhancement allotment. Further, a statutory appropriation would be made to increase funding for this allotment by 25% annually as follows:

- 2019-2020: 50%
- 2020-2021: 75%
- 2021-2022 and thereafter: 100%

PART VI: CHANGES TO PERSONAL EDUCATION SAVINGS ACCOUNTS

CURRENT LAW: Under current law, a student is eligible to receive a personal education savings account (PESA) if the student meets the following five criteria:

- (1) Resides in NC
- (2) Has not yet received a high school diploma
- (3) Has not enrolled in a postsecondary institution in a matriculated statutes eligible for 2 hours of academic credit
- (4) Is a child with a disability.
- (5) Meets one of the following criteria:
 - Is a full-time student assigned to and attending in the previous semester either a public school in North Carolina or a Department of Defense school.
 - Previously received scholarship funds from a PESA in the prior school year
 - Is entering kindergarten or first grade
 - Is in foster care
 - Had a finalized adoption decree entered in the last year
 - Is a child of a full-time, active duty member of the military
 - Is enrolled part-time in a public school and part time in a nonpublic school exclusively providing services for children with disabilities.

Under current North Carolina law, any child whose parents or legal guardians are domiciled in the State are eligible to attend public school in North Carolina. Additionally, students whose parents or legal guardians are not domiciled in the state may also be eligible to attend public schools when certain criteria are met, including natural disasters, deployments of parents in the military, or the student residing with another adult under certain circumstances related to the parent. Under current federal law,

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a student may be placed in a nonpublic school based on the student's individualized education plan at State expense if that placement is most appropriate for the student.

BILL ANALYSIS: Part VI would eliminate all of the criteria in number (5) and replace them with the requirements that the student be eligible to attend public school in North Carolina, and that the child also not be currently attending a nonpublic school at State expense. Students enrolled part time in a public school and part time in a nonpublic school that exclusively provides services for children with disabilities would continue to be eligible for the program, though they could only be awarded a maximum of \$4,500 per year.

As a result of the proposed change, the student would have to show the following to be eligible for a PESA:

- (1) Resides in NC
- (2) Has not yet received a high school diploma and is eligible to attend public school in North Carolina.
- (3) Has not enrolled in a postsecondary institution in a matriculated statutes eligible for 12 hours of academic credit
- (4) Is a child with a disability.
- (5) Has not been placed in a nonpublic school or facility by a public agency at public expense.

Students would no longer have to enroll in a public school the prior semester, or meet one of the other criteria in lieu of that requirement, in order to be eligible to receive a PESA.

PART VII: NC PRE-K STATUTORY APPROPRIATION

BILL ANALYSIS: Part VII would require the Director of the Budget to include funding for NC Pre-K in the base budget. In fiscal year 2019-2020, the base budget would have to include \$82 million and in fiscal year 2020-2021, the base budget would have to include \$91.4 million for NC Pre-K. This would increase the NC Pre-K budget by \$9.35 million each year and provide enough funding to eliminate the current NC Pre-K waitlist over the two-year period.

PART VIII: IMPLEMENT THE NORTH CAROLINA SUPREME COURT'S HOLDING IN COOPER V. BERGER BY GIVING THE GOVERNOR INCREASED CONTROL OVER THE BIPARTISAN STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT

CURRENT LAW: G.S. 163A-2 establishes the membership for the Bipartisan State Board of Elections and Ethics Enforcement (State Board). The State Board is comprised of 8 registered voters in the State, appointed by the Governor as follows:

- 4 members are affiliated with the political party with the highest number of registered affiliates.
- 4 members are affiliated with the political party with the second-highest number of registered affiliates.

The Governor makes appointments from a list of 6 nominees submitted by the State party chairs, respectively, of the 2 parties with the highest number of registered affiliates. Members are subject to

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removal by the Governor from the State Board only for misfeasance, malfeasance, or nonfeasance. Vacancy appointments are filled for the unexpired term by individuals affiliated with the same political party as the vacating member. The Governor fills vacancies from a list of 2 names submitted by the State party chair of the political party of vacating member, if submitted within 30 days of the occurrence of the vacancy.

At the first meeting in May, the State Board elects a chair and vice-chair, and at the first meeting held after new appointments are made after taking the oath, the State Board elects a secretary.

BILL ANALYSIS: Part VIII would make the following changes to the membership of the State Board:

- Add a ninth member. The ninth member must be an individual who is not affiliated with either of the 2 parties with the highest number of registered affiliates. The Governor would appoint the member from a list of 2 nominees selected by the other 8 members of the State Board within 14 days of the appointment of the 8 members. The State Board could not select the chair, vice-chair, or secretary until the 9th member is appointed.
- Vacancies for the ninth member would be filled from a list of nominees submitted to the Governor by the remaining members of the State Board, if received within 30 days. The State Board would be required to meet within 21 days of the vacancy to select the nominees.
- The Governor must make all appointments to the State Board promptly, and no later than 30 days after receipt of the list of nominees from the nominating entity.
- The Governor would have authority to remove members of the State Board in the Governor's discretion. Vacancies created by removal would be filled in the same manner as other vacancies.

BACKGROUND: In Cooper v. Berger (No. 52PA17-2), January 26, 2018, the North Carolina Supreme Court held that “the provisions of Session Law 2017-6 concerning the membership and appointments to the Bipartisan State Board, taken in context with the other provisions of that legislation, impermissibly interfere with the Governor’s ability to faithfully execute the laws in violation of Article III, Section 5(4) of the North Carolina Constitution.”

EFFECTIVE DATE: Except as otherwise provided, the act would be effective when it becomes law. Part I would be effective January 25, 2018. Sec. 3(a) and Sec. 4(a) would be effective July 1, 2018. Sec. 3(b) and Sec. 4(b) would be effective July 1, 2021.

**The following General Assembly staff members substantially contributed to this summary: Kara McCraw (Legislative Analysis), Dan Ettefagh (Legislative Drafting), Lisa Wilks (Legislative Drafting), and Deborah Landry (Fiscal Research).*