



SENATE BILL 113: Education Omnibus.

2019-2020 General Assembly

Committee:		Date:	June 25, 2020
Introduced by:	Sen. J. Davis	Prepared by:	Samantha Yarborough* Staff Attorney
Analysis of:	Conference Committee Substitute (S113-CCSTC-15)		

OVERVIEW: *The 3rd edition of S113 would do the following:*

- *Exempt certain school psychologists from North Carolina Psychology Board Licensure.*
- *Establish the School Psychologist Recruitment and Retention Pilot Program.*
- *Modify the 2020-2021 school calendar requirements.*
- *Clarify the use of school nutrition funds from the Coronavirus Relief Fund and extend the period of use of these funds.*
- *Allow LME/MCO reinvestment plans to include providing assistance to public school units.*
- *Change a charter school report date.*
- *Designate the Superintendent of Public Instruction as an approver of private activity bonds.*
- *Revise the calculation of the school administrator intern stipend.*
- *Extend the grant term for the North Carolina Transforming Principal Preparation Program.*

The Conference Committee Substitute would make the following changes:

- Add a provision to clarify the use of Digital Learning Plan funds.
- Add a provision to COVID-19 immunity for nonpublic schools for the 2019-2020 school year.
- Remove the provision that would have established the School Psychologists Recruitment and Retention Pilot Program.

PART I. SCHOOL PSYCHOLOGIST LICENSURE EXEMPTION

CURRENT LAW: G.S. 90-270.4(c) exempts from North Carolina Psychology Board licensure school psychologists who are (i) licensed by the State Board of Education as school psychologists and (ii) regularly salaried employees of the Department of Public Instruction (DPI) or a local board of education. Contracted school psychologists are not eligible for this exception and must be licensed by the North Carolina Psychology Board.

G.S. 115C-5(7a) defines any of the following as a public school unit:

- A local school administrative unit.
- A charter school.

Karen Cochrane-Brown
Director



S 1 1 3 - S M B E - 9 0 C C S T C - 1 5 - V - 4

Legislative Analysis
Division
919-733-2578

Senate CCS 113

Page 2

- A regional school.
- The Innovative School District.
- The Governor Morehead School for the Blind.
- The North Carolina School for the Deaf.
- The Eastern North Carolina School for the Deaf.
- The North Carolina School for the Arts
- The North Carolina School of Science and Mathematics.
- A laboratory school.

BILL ANALYSIS: Section 1 would extend the exemption from licensure by the North Carolina Psychology Board to contracted school psychologists and those employed by any public school unit in North Carolina.

PART II. CLARIFY USE OF DIGITAL LEARNING PLAN FUNDS

BILL ANALYSIS: Section 2 would require that Digital Learning Plan funds allotted to qualifying public school units to support adoption of the selected digital literacy curriculum provider be used solely for software licenses from that vendor. This section would become effective July 1, 2020.

PART III. MODIFICATIONS TO 2020-2021 SCHOOL CALENDAR

CURRENT LAW: Section 2.11 of S.L. 2020-3 establishes unique requirements for the 2020-2021 school calendar for public school units. These requirements include establishing a remote learning plan which will be used for 5 remote instruction days of the 2020-2021 school calendar. Public school units are not permitted to use more than 5 remote instruction days unless a state of emergency ordering school closure for more than 5 days is made during the 2020-2021 school year, however. Local school administrative units are also directed to not use remote instruction days in the first 5 days of the school year.

Section 2.11 also requires local school administrative units to meet specific start and end requirements for the 2020-2021 school year. These requirements do not apply to year-round and modified calendar schools that meet the definitions provided in Sec. 2.1 of S.L. 2020-3. To qualify as a year-round school, a school must meet one of three calendar types. Two of the types provide for multi-track year-round schools that stagger groups of students throughout the calendar year. The third type provides for a single-track year-round school that rotates 45 days of instruction with 15 days of vacation throughout the calendar year.

BILL ANALYSIS: Sec. 3 would make the following changes:

- Replace the authorization to use additional remote instruction days during a state of emergency order closing schools with authorization for the governing body of a public school unit to use additional remote instruction days if the body determines it is needed to promote the health and safety of students. Public school units would be required to comply with all COVID-19 guidance from the State Board of Education, Department of Public Instruction, and Department of Health and Human Services.
- Modify the definition of year-round schools to be calendars adopted prior to March 1, 2020, and modify the definition of single-track year-round schools to be those providing an average of between 44 and 46 instructional days followed by an average of 15-20 vacation days throughout the calendar year. Authorize modification of single-track year-round school calendars in a way that no longer meets that definition if the local board determines the modification is needed for

Senate CCS 113

Page 3

student health and safety and the altered calendar otherwise meets requirements for year-round schools.

PART IV. MODIFY USE OF SCHOOL NUTRITION FUNDS

CURRENT LAW: Sec. 3.3(6) of S.L. 2020-2 provides \$75 million in Coronavirus Relief Funds to the Department of Public Instruction for school nutrition services provided by public school units in response to COVID-19. Those funds are provided for use from March 16, 2020 through the end of the 2019-2020 school year (June 30, 2020).

BILL ANALYSIS: Section 4 would clarify that dollars provided for school nutrition from the Coronavirus Relief Fund are for emergency school nutrition services, including innovative school meals. This section would also authorize the use of these funds for the Summer Food Service Program and extend the time period for use of these funds to December 30, 2020.

PART V. LME/MCO EXPENDITURE FOR STUDENT BEHAVIORAL HEALTH NEEDS

CURRENT LAW: G.S. 122C-125.2(a) requires that the North Carolina Department of Health and Human Services (Department) calculate on a quarterly basis a solvency range for each local management entity/managed care organization (LME/MCO). One factor in this calculation is the reinvestment plan figure, which is the amount required for all qualifying expenditures contained in the LME/MCO's reinvestment plans over the next 36 months. Qualifying expenditures must be related to one of the following:

- An initiative that supports specific goals or health status outcomes of the State in relation to the State's behavioral health needs.
- An initiative that meets a State behavioral health need, as defined in law or by the Department.
- Funding for infrastructure that supports the effective and efficient operation of the LME/MCO.
- Funding for a facility within the LME/MCO catchment area that is necessary to meet the needs of the population served by the LME/MCO.
- New or expanded initiatives and programmatic improvements to the State behavioral health system.
- Working capital to be utilized to fund changes in rates, operations, or programs.

BILL ANALYSIS: Section 5 would add an additional category of qualifying expenditures for the reinvestment plan of an LME/MCO that includes assistance to public school units within the LME/MCO catchment area for student behavioral health needs.

PART VI. CHANGE CHARTER SCHOOL REPORT DATE

CURRENT LAW: G.S. 115C-218.110(b) requires the State Board of Education to review and evaluate the educational effectiveness of charter schools and the effect of charter schools on the public schools in the local school administrative unit in which the charter schools are located. The State Board is required to report this information to the Joint Legislative Education Oversight Committee by February 15 of each year.

Senate CCS 113

Page 4

BILL ANALYSIS: Section 6 would change the due date of a report from the State Board of Education on charter schools from February 15 to June 15.

PART VII. SUPERINTENDENT MAY APPROVE BONDS TO FINANCE OR REFINANCE A CHARTER SCHOOL FACILITY

CURRENT LAW: Under the Internal Revenue Code, a qualified private activity bond is a type of tax-exempt bond that state and local governments may issue to finance certain projects that would otherwise be classified as private activities. These include nonprofit corporations carrying out charitable purposes, including education. 26 U.S.C. 145. The governmental body has authority to serve as a “conduit” issuer, but has no liability for the repayment of the debt, and only acts as an issuer so that the private activity bonds can be tax exempt. Article 2 of Chapter 159D of the General Statutes establishes the North Carolina Capital Facilities Finance Agency as an issuer in North Carolina for these types of conduit bonds. There are also governmental entities such as the Public Finance Authority in Wisconsin that issue conduit bonds for public and private entities throughout all 50 states.

The Internal Revenue Code, 26 U.S.C. 147(f), requires that qualified private activity bonds receive public approval by both the governmental entity issuing the bonds (issuer approval) and a governmental entity having jurisdiction over the area in which the bond-financed facility is to be located (host approval). Public approval may be satisfied by approval of an applicable elected representative of the approving government unit following a public hearing for which there was reasonable public notice, or by a voter referendum. 26 U.S.C. 147(f). An “applicable elected official” includes an official elected by the voters of the governmental unit and authorized by State law to provide such approval. 26 U.S.C. 147(f)(2)(E)(i)(II).

BILL ANALYSIS: Sec. 7 of the bill would designate the Superintendent of Public Instruction as an applicable elected representative under the Internal Revenue Code who may approve issuance of a private activity bond to finance a charter school facility, following a public hearing conducted in the county where the charter school facility is or will be located in accordance with the Internal Revenue Code and applicable State and federal laws and regulations.

PART VIII. REVISE SCHOOL ADMINISTRATOR INTERN STIPEND

BILL ANALYSIS: If Senate Bill 818 becomes law, Section 8 would revise the calculation of the school administrator intern stipend so that it is based on the higher of the beginning salary of an assistant principal or, for a teacher who becomes an intern, at least as much as that person would make as a teacher.

PART IX. EXTEND MAXIMUM GRANT TERM TO SIX YEARS FOR THE NORTH CAROLINA TRANSFORMING PRINCIPAL PREPARATION PROGRAM

CURRENT LAW: G.S. 116-74.44 creates the North Carolina Transforming Principal Preparation Program as a competitive grant program for eligible entities for the purpose of elevating educators in North Carolina public schools by transforming the preparation of principals and providing for forgivable scholarship loans to the participants in these programs. Under G.S. 116-46(c), grants are to be given for

Senate CCS 113

Page 5

no more than 5 years and no less than 2 years, unless early termination is necessary due to noncompliance with the grant terms.

BILL ANALYSIS: Section 9 would extend the maximum grant term for a grant awarded under the NC Transforming Principal Preparation Program from 5 years to 6 years to align with the program length of the school leader preparation programs offered by grantees.

PART X. COVID-19 IMMUNITY FOR NONPUBLIC SCHOOLS

BILL ANALYSIS: Section 10 would create a new Part granting limited immunity for nonpublic schools for claims related to tuition and fees paid for the 2019-2020 academic year that arise from alleged acts or omissions taken by the IHE in response to COVID-19. Nonpublic schools would be able to assert this immunity if the alleged acts or omissions were reasonably related to protecting the public health, safety, or welfare in response to COVID-19 executive orders or guidance from the Centers for Disease Control and Prevention, and if the nonpublic school offered remote learning options for students to complete academic year.

Nonpublic schools would not be able to assert this immunity for losses or damages resulting solely from breach of an express contractual provision that allocated liability in the event of a pandemic, or if the losses or damages were caused by an act or omission that was in bad faith or malicious.

The Part would be limited to alleged acts or omission occurring between March 10, 2020, and July 1, 2020.

Provisions of the Article would be severable if a court invalidated certain sections.

EFFECTIVE DATE: Section 10 would become effective when it becomes law, and would apply to actions commenced on or after that date.

BACKGROUND: The effective date of Section 10 would apply retroactively to acts or omissions occurring prior to the effective date of the law. The due process clause of the United States Constitution and the corresponding Law of the Land clause of the North Carolina Constitution (Article 1, Section 19) generally protect individuals from laws that retroactively deprive them of vested rights. A "statute may be applied retroactively only insofar as it does not impinge upon a right which is otherwise secured, established, and immune from further legal metamorphosis." Gardner v. Gardner, 300 N.C. 715, 719 (1980). However, courts have also recognized that the right to make contracts is subject to the power of the General Assembly to impose restrictions for the benefit of the general public in areas of public interest. Mazda Motors of Am., Inc. v. Sw. Motors, Inc., 36 N.C. App. 1, 6-7, (1978), aff'd in part, rev'd in part, 296 N.C. 357 (1979). Ultimately, a determination of whether the retroactive application of this law would deprive any individual of vested rights would be made by the courts.

EFFECTIVE DATE: Except as otherwise provided, the act is effective when it becomes law.

**Kara McCraw and Brian Gwyn, staff attorneys in the Legislative Analysis Division, and Leslie Karkanawi, Matt Pagett, and Caroline Sorensen, staff attorneys in the Bill Drafting Division, substantially contributed to this summary.*