



SENATE BILL 636: School Athletic Transparency.

This Bill Analysis reflects the contents of the bill as it was presented in committee.

2023-2024 General Assembly

Committee:	Senate Education/Higher Education.	Date:	May 1, 2023
	favorable, re-refer to Rules and Operations of the Senate		
Introduced by:	Sens. Sawyer, Johnson, McInnis	Prepared by:	Kara McCraw
Analysis of:	First Edition		Staff Attorney

OVERVIEW: SB 636 would make various changes to regulation of interscholastic athletics, including:

- Clarifying and modifying requirements for rules related to interscholastic athletics.
- Requiring the Superintendent of Public Instruction to enter into memoranda of understanding with administering organizations and oversee middle and high school athletics.
- Requiring administering organizations to meet certain requirements and restrictions related to oversight of high school interscholastic athletics.
- Make administering organizations a public body under the open meetings law.
- Require public school units to annually report on interscholastic expenses and receipts.
- Require the Superintendent of Public Instruction to study and report on various matters related to interscholastic athletics.

CURRENT LAW: G.S. 115C-12(23) and Article 29E of Chapter 115C requires the State Board of Education (SBE) to adopt rules governing high school interscholastic athletic competitions conducted by public school units. These rules must include student eligibility and participation (including student health and safety), appeals, administering organizations, and reporting issues of concerns. The SBE may authorize a nonprofit to apply and enforce the SBE's rules for high school athletics as an administering organization, if the SBE enter into a memorandum of understanding (MOU) with that nonprofit meeting certain requirements. The SBE may delegate rulemaking to the administering organization for penalties, administration, gameplay, and fees.

BILL ANALYSIS: SB 636 would make the following changes:

PART I: Oversight of High School Interscholastic Athletics

- Clarify the following rules that must be adopted by the SBE and which rules could not be delegated as follows:
 - Student participation rules could not be delegated. Additionally:
 - Enrollment and transfer requirements would include certain restrictions on students attending a local school administrative unit (LEA) who live outside of that LEA, and charter students given priority enrollment based on fraudulent parental employment with the charter school as determined by the Office of Charter Schools.

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- Biological participation requirement would require that female interscholastic athletics activities not be open to males.
 - Student health and safety rules could not be delegated.
 - Penalty rules would apply to violations of student participation rules and gameplay, and could not result in monetary penalties.
 - Appeals rules would provide due process for students, parents, and participating schools and could not be delegated. The rules would require that the Superintendent of Public Instruction (SPI) appoint the independent appeal board, and that students and their parents be allowed to appeal any individual penalty that restricted participation in games.
 - Administrative rules would be required to classify schools into four athletic divisions based solely on average daily membership (ADM), with charters assigned to the next largest conference. The only factors that could be considered for conference classification would be ADM, geography, and division classification.
 - Fees charged to participate in interscholastic athletic activities could not be delegated.
 - Administering organization rules could not be delegated.
 - Reporting rules could not be delegated, and would include a process for reporting intimidation or harassment by an administering organization of a participating school, its employees, or its students.
- The SPI would enter into memoranda of understanding with administering organizations that require the administering organization to meet the following requirements:
 - Apply, enforce, and administer all SBE rules.
 - If delegated, adopt, apply, enforce, and administer administrative, gameplay and penalty rules. Rules must be published on the organization's website before adoption to provide an opportunity for the public to comment. Rules must be provided to the SPI within 15 days of adoption for review. If the SPI determines the rule is unenforceable, the SPI would notify the SBE and the rule would not be enforced. The SBE would either notify the administering organization to revise the rule or rescind the authority to make the rule.
 - Make publicly available at no cost the organization's handbook, rules, and appeals process.
 - Ensure that board membership reflects equal representation from each education district.
 - Adopt an ethics policy to avoid conflicts of interest and the appearance of impropriety.
 - Comply with the requirements of the Public Records and Open Meetings laws.
 - Apply federal standards for privacy of student records.
 - Enter into contracts with participating schools on the monetary requirements for participation.
 - Agree to reduce fees by at least 20% when the organization's total fund balance reaches 250% of total expenses from the prior year, and not increase fees again until the fund balance reaches 150% of total expenses from the prior year.
 - Agree to retain no more than 33% of the net proceeds of state tournament games.
 - Agree to be audited annually by a reputable independent auditing firm and by the State Auditor when deemed necessary.
 - Agree to not engage in any of the following:
 - Soliciting grant-funding or sponsorships from third-parties, except for state tournament games.
 - Provide grants to participating schools.

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- Provide scholarships, except when funded by donor-directed funds.
- Designate use of specific or preferred vendors, or require the use of any single-source and vendor specific contracts.
- Retain game receipts, other than for the state tournament game.
- Regulate or control the intellectual property of a participating school, including audio and video of games, other than the state tournament game.
- Restrict recordings of state tournament games by parents of participating students or participating school employees.
- Retain any portion of receipts from ticket, merchandise, or concession sales by participating schools.
- Retaliate against participating schools, employees, parents, or students for reporting rules violations or other wrongdoing to the organization, SBE, or other governmental entities.
- Prohibit scheduling nonconference games during the regular season or take any portion of ticket sales from those games.
- Annually report to the SPI on the prior year activities, audit, schedule of fees, fees and gate receipts collected, and current fund balance.
- The SPI would be authorized to terminate an MOU for noncompliance. In the event of termination, the organization would be required to return a pro rata share of the fees provided in each participating school's annual contract.
- PSUs would be required to report annually to the SPI by June 15 annually on total dollar amounts spent and received on interscholastic athletic activities, broken down into certain categories. The SPI would report annually on this information to the Joint Legislative Education Oversight Committee by October 15 annually. The first report would be due from PSUs July 15, 2024, and would include data for the prior 5 years.
- Open meeting laws would be clarified to include administering organizations as public bodies.

PART II: Reorganization

- PSUs would conduct all middle school interscholastic athletics in accordance with the SBE rules and under the administration of the SPI.
- Current laws related to interscholastic athletics, including about concussions, head injuries, and emergency action plans would be reorganized and recodified.

PART III:

Implementation

- The SBE would adopt review and adopt new or revised rules for the 2023-2024 school year by August 1, 2023 using emergency rulemaking.
- The SBE would adopt new or revised permanent rules for use in 2024-2025 and following school years.

Studies

The SPI, in consultation with any administering organization, would be required to study and report on the following to the Joint Legislative Education Oversight Committee by April 1, 2024:

- Whether an administering organization should be responsible for overseeing the conduct of middle school interscholastic athletics for public school units.

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- Factors that should be considered in participation in interscholastic athletics by the following (i) home school students, (ii) cooperative innovative high school students, and (iii) nonpublic schools.

EFFECTIVE DATE: SB 636 would become effective when it becomes law. Part I and Part II would apply beginning with the 2023-2024 school year.

BACKGROUND: The Joint Legislative Commission on Governmental Operations, Subcommittee on Interscholastic Athletics met in 2021 and 2022. Information on the Subcommittee meetings can be found [here](#).