



HOUSE BILL 91: Accountability and Fair Play in Athletics.

2021-2022 General Assembly

Committee:	Senate Education/Higher Education.	If Date:	August 25, 2021
	favorable, re-refer to Rules and Operations of the Senate		
Introduced by:	Reps. Bell, Lambeth, K. Baker, Saine	Prepared by:	Kara McCraw
Analysis of:	Amendment to Fifth Edition		Staff Attorney
	H91-ATC-107		

OVERVIEW: *The amendment to the 5th Edition of HB 91 would replace the contents of the bill with new requirements for overseeing regulation of interscholastic athletics, including a memorandum of understanding that requires specific obligations for a nonprofit authorized to administer high school interscholastic athletics.*

CURRENT LAW: G.S. 115C-12(23) requires the State Board of Education (SBE) to adopt rules governing interscholastic athletic competitions conducted by local boards of education. The rules must establish the requirements for student eligibility, as well as concussion protocols and venue specific emergency action plans. The SBE may authorize a designated organization to apply and enforce the SBE's rules for high school athletics.

G.S. 115C-47(4) requires local boards of education to make rules for extracurricular activities, including interscholastic athletics. The rules for interscholastic athletics must be in accordance with the SBE rules.

The SBE has established rules for interscholastic athletics in 16 NCAC 06E .0204. This rule establishes eligibility requirements on residency, age, academic progress, and medical examinations, and minimum penalties for ejections from games. The rule also authorized local school administrative units to belong to the North Carolina High School Athletic Association (NCHSAA), and authorizes the NCHSAA to waive eligibility requirements in the rule, other than age, if it finds that the rule fails to accomplish its purpose, or it works an undue hardship on a student who has lost eligibility due to circumstances that made participation impossible such as prolonged illness or injury. The NCHSAA is also authorized to enforce penalties for rules violations at the high school level.

BILL ANALYSIS: **Part I** of HB 91 would restructure regulation of high school interscholastic athletics, applicable October 15, 2021.

SBE Requirements

- The SBE could either enter into a memorandum of understanding (MOU) with a nonprofit organization to administer high school interscholastic athletics (administering organization) or could assign administration to the Department of Public Instruction (DPI).
- The SBE would oversee middle school athletics for all PSUs.
- The SBE would adopt rules for student participation in interscholastic athletics that regulate student participation, health, and safety for all public school units (PSUs). The rules would include standards for academics, enrollment, attendance, medical eligibility, recruiting limitations, and hardship exceptions. The rules would include existing requirements related to concussions, head injuries, and emergency action plans.

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House Bill 91

Page 2

- The SBE could either adopt gameplay rules and penalty rules or delegate that responsibility to the administering organization through the MOU. Gameplay rules would include establishing athletic divisions, dividing schools into conferences within divisions, establishing pre-, regular, and post-season schedules and requirements, game rules and administration, and requirements for coaching, officiating, and sportsmanship. Penalty rules would be a system of demerits for infractions of student participation and gameplay rules that do not include monetary penalties.
- The SBE would establish an appeals process for enforcement of all rules that includes an independent board appointed by the SBE. The administering organization could administer the appeals process subject to the MOU.
- The SBE would establish a mechanism for reporting of intimidation or harassment by an administering organization.

PSU Requirements:

- PSUs would conduct all middle school interscholastic athletics in accordance with the SBE rules. For high school, PSUs would conduct all interscholastic athletics in accordance with the SBE rules and as administered and enforced by the administering organization or DPI.
- PSUs would purchase catastrophic insurance for interscholastic athletics through the Department of Insurance.
- PSUs would annually report on a rolling three-year span of information related to funds spent on interscholastic athletic activities and funds received from interscholastic athletic activities, broken down into certain categories by July 15 to the SBE. The SBE would provide a summary of the reports and copy of each report to the Joint Legislative Education Oversight Committee by October 15, annually. The initial report would be due from PSUs on July 15, 2023, and would cover the prior five years.

Administering Organization Requirements:

- The administering organization would be required to enter into an MOU with the SBE that required the organization to do the following:
 - Apply, enforce, and administer all SBE rules.
 - If delegated, adopt, apply, enforce, and administer gameplay and penalty rules. Rules must be published on the organization's website before adoption to provide an opportunity for the public to comment. The State Board may deem any rule adopted by the organization unenforceable.
 - 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 Open Records and Public Meeting 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.

House Bill 91

Page 3

- Agree to be audited by the State Auditor annually.
- 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.
 - Provide scholarships, except when funded by donor-directed funds.
 - Designate use of vendors.
 - 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.
 - Annually report to the SBE on the prior year activities, audit, schedule of fees, fees and gate receipts collected, and current fund balance.
- The SBE would be authorized to terminate an MOU for noncompliance. In the event of termination, the organization would be required to return a pro rate share of the fees provided in each participating school's annual contract.
- The State Auditor is authorized to annually audit an administering organization.

Implementation

- The SBE would adopt revised rules for the 2021-2022 school year by October 15, 2021 using emergency rulemaking. For the 2021-2022 school year, students would not be required to meet academic requirements for participation, and would be eligible for hardship waivers for age eligibility requirements, in recognition of the impacts of COVID-19 on students.
- The SBE would adopt new or revised permanent rules for use in 2022-2023 and following school years.
- An MOU entered into for the 2021-2022 school year must terminate no later than June 30, 2023.
- Only a nonprofit that has entered into an MOU with the SBE may apply and enforce the SBE's rules for participation in interscholastic athletic activities during the 2021-2022 school year or thereafter.
- For the 2021-2022 school year, if the NCHSAA enters into an MOU with the SBE for the 2021-2022 school year, one of the conditions would be that the NCHSAA waive collection of all fees for participating schools for the 2021-2022 school year, except for fees associated with post-season conference games, in recognition of decreased access to interscholastic sports for participating schools in the 2020-2021 school year due to COVID-19.

Studies

House Bill 91

Page 4

The State Board of Education, 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, 2022:

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

Part II of HB 91 would make conforming changes to the statutory reorganization and remove references in statute to the NCHSAA.

Part III of HB 91 would require the Department of Insurance to offer catastrophic insurance coverage to participating schools to cover interscholastic athletic activities.

EFFECTIVE DATE: Part I of HB 91 would become effective when it becomes law, and would apply to regulation of high school interscholastic athletics beginning October 15, 2021. Part II would become effective October 15, 2021. The remainder of the act would become effective when it becomes law.

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