

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023**

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SENATE BILL 853

Short Title: OPS Moratorium/OPS & PESA Accountability. (Public)

Sponsors: Senators Robinson, Blue, and Garrett (Primary Sponsors).

Referred to: Rules and Operations of the Senate

May 6, 2024

A BILL TO BE ENTITLED
AN ACT TO IMPOSE A MORATORIUM ON THE AWARD OF NEW OPPORTUNITY
SCHOLARSHIPS AND TO ENACT OTHER ACCOUNTABILITY MEASURES FOR
OPPORTUNITY SCHOLARSHIPS AND PERSONAL EDUCATION STUDENT
ACCOUNTS.

The General Assembly of North Carolina enacts:

**PART I. MORATORIUM AND ACCOUNTABILITY MEASURES FOR
OPPORTUNITY SCHOLARSHIPS**

SECTION 1.(a) Beginning with the 2024-2025 fiscal year, the State Education Assistance Authority shall not award any scholarship grant funds under Part 2A of Article 39 of Chapter 115C of the General Statutes to new persons who did not receive scholarship grant funds in the prior school year. It is the intent of the General Assembly to eliminate the program for awarding scholarship grants under Part 2A of Article 39 of Chapter 115C of the General Statutes beginning in the 2036-2037 school year or once all current recipients become ineligible for the receipt of scholarship grants.

SECTION 1.(b) Subsection (b) of G.S. 115C-562.2 is reenacted.

SECTION 1.(c) G.S. 115C-562.1, as amended by Section 8A.6 of S.L. 2023-134, reads as rewritten:

"§ 115C-562.1. Definitions.

The following definitions apply in this Part:

...

(3a) Eligible student. – A student residing in North Carolina who has not yet received a high school diploma and who meets all of the following requirements:

- a. Is eligible to attend a North Carolina public school pursuant to Article 25 of this Chapter. A child who is the age of 4 on or before April 16 is eligible to attend the following school year if the principal, or equivalent, of the school in which the child seeks to enroll finds that the student meets the requirements established by the Authority pursuant to G.S. 115C-562.2(d) and those findings are submitted to the Authority.
- b. Has not been enrolled in a postsecondary institution as a full-time student taking at least 12 hours of academic credit.
- c. Has not been placed in a nonpublic school or facility by a public agency at public expense.



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d. Received a scholarship grant for the school year prior to the school year for which the student is applying.

...."

SECTION 1.(d) G.S. 115C-562.2, as amended by Section 8A.6(c) of S.L. 2023-134 and subsection (b) of this section, reads as rewritten:

"§ 115C-562.2. Scholarship grants.

(a) The Authority shall make available no later than February 1 annually applications to eligible students for the award of scholarship grants to attend any nonpublic school on a full- or part-time basis. Information about scholarship grants and the application process shall be made available on the Authority's ~~Web site.~~ website. Beginning March 15, the Authority shall begin awarding scholarship grants to students who have applied by ~~March 1 in the following order:~~

- ~~(1) Eligible students who received a scholarship grant for the school year prior to the school year for which the students are applying.~~
- ~~(2) Eligible students qualifying for a scholarship grant in the amount provided under subdivision (1) of subsection (b2) of this section.~~
- ~~(3) Eligible students qualifying for a scholarship grant in the amount provided under subdivision (2) of subsection (b2) of this section.~~
- ~~(4) Eligible students qualifying for a scholarship grant in the amount provided under subdivision (3) of subsection (b2) of this section.~~
- ~~(5) All other students.~~ March 1.

(b) Scholarship grants awarded to eligible students residing in households with an income level not in excess of the amount required for the student to qualify for the federal free or reduced-price lunch program shall be, per year per eligible student, in an amount of up to ninety percent (90%) as a full-time student or up to forty-five percent (45%) as a part-time student of the average State per pupil allocation for average daily membership in the prior fiscal year. Scholarship grants awarded to eligible students residing in households with an income level in excess of the amount required for the student to qualify for the federal free or reduced-price lunch program shall be for amounts of not more than ninety percent (90%) of the required tuition and fees as a full-time student or forty-five percent (45%) of the required tuition and fees as a part-time student for the nonpublic school the eligible child will attend. Tuition and fees for a nonpublic school may include tuition and fees for books, transportation, equipment, or other items required by the nonpublic school. No scholarship grant shall exceed, per year per eligible student, an amount equal to ninety percent (90%) for a full-time student or forty-five percent (45%) for a part-time student of the average State per pupil allocation for average daily membership in the prior fiscal year, and no scholarship grant shall exceed the required tuition and fees for the nonpublic school the eligible student will attend.

...

~~(b2) Scholarship grants shall be awarded to eligible students as follows:~~

- ~~(1) For students residing in households with an income level not in excess of the amount required for the student to qualify for the federal free or reduced-price lunch program, per year per eligible student, an amount of up to one hundred percent (100%) of the average State per pupil allocation for average daily membership in the prior fiscal year.~~
- ~~(2) For students residing in households with an income level between the amount required for the student to qualify for the federal free or reduced-price lunch program and not in excess of two hundred percent (200%) of that amount, per year per eligible student, an amount of up to ninety percent (90%) of the average State per pupil allocation for average daily membership in the prior fiscal year.~~
- ~~(3) For students residing in households with an income level of between two hundred percent (200%) of the amount required for the student to qualify for~~

the federal free or reduced price lunch program and not in excess of four hundred fifty percent (450%) of that amount, per year per eligible student, an amount of up to sixty percent (60%) of the average State per pupil allocation for average daily membership in the prior fiscal year.

(4) For all students, per year per eligible student, an amount of up to forty five percent (45%) of the average State per pupil allocation for average daily membership in the prior fiscal year, unless the student qualifies for a higher amount under this subsection.

(b3) Tuition and fees for a nonpublic school may include tuition and fees for books, transportation, equipment, or other items required by the nonpublic school.

(b4) No scholarship grant shall exceed, per year per eligible student, an amount equal to one hundred percent (100%) of the average State per pupil allocation for average daily membership in the prior fiscal year, and no scholarship grant shall exceed the required tuition and fees for the nonpublic school the eligible student will attend.

(b5) In addition to the amount of the scholarship grant, for any student receiving a scholarship grant in grades three, eight, or 11, the Authority shall provide to the nonpublic school an amount equal to the cost of the nationally standardized test required to be administered as provided in G.S. 115C-562.5.

...."

SECTION 1.(e) G.S. 115C-562.5, as amended by Sections 7.80, 8A.6, 8A.12, and 8A.16 of S.L. 2023-134, reads as rewritten:

"§ 115C-562.5. Obligations of nonpublic schools accepting eligible students receiving scholarship grants.

(a) A nonpublic school that accepts eligible students receiving scholarship grants shall comply with the following:

(1) Provide Annually provide to the Authority documentation for required tuition and fees charged to the student by the nonpublic school. A nonpublic school that accepts eligible students receiving scholarship grants shall not increase tuition in a given year by more than the change in the Consumer Price Index, as calculated and reported by the Federal Bureau of Labor Statistics, that is reported in the calendar year in which the tuition increase would occur.

(2) Provide to the Authority a criminal background check conducted for the staff member with the highest decision-making authority, as defined by the bylaws, articles of incorporation, or other governing document. Information provided to the Authority in accordance with this subdivision is privileged information and is not a public record but is for the exclusive use of the Authority.

(3) Provide to the parent or guardian of an eligible student, whose tuition and fees are paid in whole or in part with a scholarship grant, an annual written explanation of the student's progress, including the student's scores on standardized achievement tests.

(4) Administer, at least once in each school year, tests as provided in this subdivision. Administer each school year all tests required by the State Board of Education pursuant to G.S. 115C-174.11(c) for students in grades three and higher in a local school administrative unit. Test performance data for students shall be submitted to the Authority by July 15 of each year. The nonpublic school shall retain this data for five years, and the Authority may audit the nonpublic school to ensure compliance with the retention requirement. Test performance data reported to the Authority or collected by the Authority under this subdivision is not a public record under Chapter 132 of the General Statutes. Statutes, to the extent the data contains personally identifiable information. Tests shall be administered to all eligible students enrolled in

grades three and higher whose tuition and fees are paid in whole or in part with a scholarship ~~grant~~ as follows:

- a. ~~The nationally standardized test designated by the Authority in grades three and eight.~~
- b. ~~The ACT in grade 11.~~
- e. ~~A nationally standardized test or other nationally standardized equivalent measurement selected by the chief administrative officer of the nonpublic school in all other grades four and higher. For grades four through seven, the nationally standardized test or other equivalent measurement selected must measure achievement in the areas of English grammar, reading, spelling, and mathematics. For grades nine, 10, and 12, the nationally standardized test or other equivalent measurement selected must measure either (i) achievement in the areas of English grammar, reading, spelling, and mathematics or (ii) competencies in the verbal and quantitative areas.~~ grant. Nothing in this subdivision shall prohibit a nonpublic school from administering additional tests to its students.

(5) ~~Provide to the Authority graduation rates of the students receiving scholarship grants—grants, including four-year cohort graduation rates, in a manner consistent with nationally recognized standards.~~ Title I of the Elementary and Secondary Education Act of 1965, as amended, and any associated federal regulations.

(6) ~~Contract with a certified public accountant to perform a financial review, an audit, consistent with generally accepted methods of accounting or any other comprehensive basis of accounting recognized by the American Institute of Certified Public Accountants (AICPA) for each school year in which the school enrolls 70 or more students receiving scholarship grants or scholarship funds awarded by the Authority.~~ accepts students receiving one hundred thousand dollars (\$100,000) or more in scholarship grants awarded under this Part. If a school accepts students receiving less than one hundred thousand dollars (\$100,000), it shall contract pursuant to this subdivision for an audit every three years. A nonpublic school shall report the results of an audit by December 31 of the year in which the audit is conducted.

(7) ~~Maintain a school facility within the State where in-person instruction is provided. This subdivision does not prohibit a school from offering remote-only courses of instruction in addition to in-person instruction.~~

(8) ~~Provide the following information annually to the Division:~~

- a. ~~Name and address of the school, including physical location address. A school with more than one physical location shall establish a separate notice of intent for each physical location and shall provide all information required by this subdivision for each physical location.~~
- b. ~~The name of the owners and chief administrator.~~ administrator, including contact information.
- c. ~~Number of students in attendance at the school as of October 1.~~
- d. All attendance records of students receiving scholarship grants from the previous school year.
- e. Documentation of a completed fire inspection in the previous 365 days.

(9) For any child with a disability who is a recipient of scholarship funds, educate that child in accordance with his or her Individualized Education Program (IEP) and in compliance with IDEA, as defined in G.S. 115C-106.3(6), and

- 1 applicable policies adopted by the State Board of Education for local school
2 administrative units under Article 9 of Chapter 115C of the General Statutes.
3 (10) Comply with the requirements of Article 8C of this Chapter, including the
4 following:
- 5 a. School Risk Management Plan. – The nonpublic school, in
6 coordination with local law enforcement agencies, shall adopt a
7 School Risk Management Plan (SRMP) relating to incidents of school
8 violence. In constructing and maintaining these plans, the nonpublic
9 school shall utilize the School Risk and Response Management
10 System established pursuant to G.S. 115C-105.49A. These plans are
11 not considered a public record as the term "public record" is defined
12 under G.S. 132-1 and shall not be subject to inspection and
13 examination under G.S. 132-6.
 - 14 b. Schematic diagrams and school crisis kits. – The nonpublic school
15 shall provide schematic diagrams and keys to the main entrance of
16 school facilities to local law enforcement agencies, in addition to
17 implementing the provisions in G.S. 115C-105.52.
 - 18 c. School safety exercises. – At least once a year, the nonpublic school
19 shall hold a full school-wide lockdown exercise with local law
20 enforcement and emergency management agencies that are part of the
21 school's SRMP.
 - 22 d. Safety information provided to the Department of Public Safety,
23 Division of Emergency Management. – The nonpublic school shall
24 provide the following: (i) schematic diagrams, including digital
25 schematic diagrams, and (ii) emergency response information
26 requested by the Division for the SRMP. The schematic diagrams and
27 emergency response information are not considered public records as
28 the term "public record" is defined under G.S. 132-1 and shall not be
29 subject to inspection and examination under G.S. 132-6.
- 30 (b) A nonpublic school that accepts students receiving scholarship grants shall not require
31 any additional fees based on the status of the student as a scholarship grant recipient.
- 32 (c) A nonpublic school enrolling more than 25 students in any grade whose tuition and
33 fees are paid in whole or in part with a scholarship grant shall provide and retain information on
34 student test performance in each grade with more than 25 students, as follows:
- 35 (1) Report to the Authority on the aggregate standardized test performance of
36 eligible students in grades ~~three, eight, and 11.~~ three and higher pursuant to
37 subdivision (4) of subsection (a) of this section. Aggregate test performance
38 data reported to the Authority which does not contain personally identifiable
39 student data shall be a public record under Chapter 132 of the General ~~Statutes.~~
40 Statutes, and the Authority shall post this data on its website. Test
41 performance data may be shared with public or private institutions of higher
42 education located in North Carolina and shall be provided to an independent
43 research organization selected by the Authority for research purposes as
44 permitted by the Federal Education Rights and Privacy Act, 20 U.S.C. §
45 1232g.
 - 46 (2) Retain standardized test performance data for eligible students in all other
47 grades and annually certify to the Authority compliance with the requirements
48 of subdivision (4) of subsection (a) of this section.
- 49 (c1) A nonpublic school shall not discriminate with respect to the categories listed in 42
50 U.S.C. § 2000d, as that statute read on January 1, ~~2014.~~ 2014, or on the basis of disability, as

defined in the Americans with Disabilities Act, 42 U.S.C. § 12102, as that statute read on January 1, 2024.

...
(e) If a nonpublic school terminates operation during the school's regular schedule and fails to (i) report the date of the closure to the Division within 14 days and (ii) return funds owed to the Authority in a timely manner for students who received scholarship grants, any other nonpublic school opened during that school year or subsequent school years by an owner or chief administrator listed in the report submitted to the Division under ~~subdivision (7)~~ subdivision (8) of subsection (a) of this section for that closed school shall be ineligible to receive scholarship grants until such time the Authority determines the obligation to return those funds has been satisfied."

SECTION 1.(f) G.S. 115C-562.7, as amended by Sections 7.82 and 8A.6 of S.L. 2023-134, reads as rewritten:

"§ 115C-562.7. Reporting requirements.

...
(b) The Authority shall report annually, no later than October 15, to the Joint Legislative Education Oversight Committee on the following information from the prior school year:

- (1) Total number, grade level, race, ethnicity, and sex of eligible students receiving scholarship grants.
- (2) Total amount of scholarship grant funding awarded.
- ...
- (4) Nonpublic schools in which scholarship grant recipients are enrolled, including numbers of scholarship grant students at each nonpublic school.
- (5) Nonpublic schools deemed ineligible to receive scholarships.
- (6) Compliance with the academic assessments required by G.S. 115C-562.5(a)(4).

...
(g) No later than September 30 of each year, the Authority, in consultation with the Department of Public Instruction, shall publish on its website school achievement, growth, and performance scores of nonpublic schools accepting more than 25 students in any grade whose tuition and fees are paid in whole or in part with a scholarship grant. The scores shall be calculated pursuant to the methodology provided in G.S. 115C-83.15."

SECTION 1.(g) G.S. 115C-562.8, as amended by Section 8A.6 of S.L. 2023-134, reads as rewritten:

"§ 115C-562.8. The Opportunity Scholarship Grant Fund Reserve.

...
(b) ~~The General Assembly finds that, due to the critical need in this State to provide opportunity for school choice for North Carolina students, it is imperative that the State provide an increase of funds for 15 years to the Opportunity Scholarship Grant Fund Reserve. Therefore, there~~ There is appropriated from the General Fund to the Reserve the following amounts for each fiscal year to be used for the purposes set forth in this section:

Fiscal Year	Appropriation
...	
2025-2026	\$415,540,000 \$174,236,499
2026-2027	\$430,540,000 \$166,919,213
2027-2028	\$445,540,000 \$158,337,000
2028-2029	\$460,540,000 \$147,151,195
2029-2030	\$475,540,000 \$134,275,040
2030-2031	\$490,540,000 \$119,413,575
2031-2032	\$505,540,000 \$105,039,929
<u>2032-2033</u>	<u>\$89,344,633</u>

1	<u>2033-2034</u>	<u>\$71,034,400</u>
2	<u>2034-2035</u>	<u>\$48,759,219</u>
3	<u>2035-2036</u>	<u>\$24,022,254</u>

4 For the ~~2032-2033-2036-2037~~ fiscal year and each fiscal year thereafter, ~~there is appropriated~~
5 ~~from the General Fund to the Reserve the sum of five hundred twenty million five hundred forty~~
6 ~~thousand dollars (\$520,540,000) to be used for the purposes set forth in this section. no funds~~
7 ~~shall be appropriated to the Reserve. When developing the base budget, as defined by~~
8 ~~G.S. 143C-1-1, for each fiscal year specified in this subsection, the Director of the Budget shall~~
9 ~~include the appropriated amount specified in this subsection for that fiscal year.~~

10"

11 **SECTION 1.(h)** Subsections (i) and (j) of Section 8A.6 of S.L. 2023-134 are
12 repealed.

13 **SECTION 1.(i)** Section 8A.6 of S.L. 2023-134 is further amended by adding the
14 following new subsection to read:

15 "**SECTION 8A.6.(j1)** Notwithstanding any provision of law or the Committee Report
16 described in Section 43.2 of this act to the contrary, the three hundred fifty-four million five
17 hundred forty thousand dollars (\$354,540,000) in recurring funds appropriated to the Opportunity
18 Scholarship Grant Fund Reserve (Reserve) for the 2024-2025 fiscal year shall be reduced by one
19 hundred seventy-four million one hundred seventy-one thousand seven hundred twenty-nine
20 dollars (\$174,171,729) so that the total recurring appropriation to the Reserve is one hundred
21 eighty million three hundred sixty-eight thousand two hundred seventy-one dollars
22 (\$180,368,271)."

23 24 **PART II. ACCOUNTABILITY MEASURES FOR PERSONAL EDUCATION STUDENT** 25 **ACCOUNTS**

26 **SECTION 2.(a)** Article 41 of Chapter 115C of the General Statutes is amended by
27 adding the following new section to read:

28 "§ 115C-593.5. Academic assessments.

29 (a) A nonpublic school that accepts eligible students receiving scholarship funds shall
30 administer, at least once in each school year, all tests required by the State Board of Education
31 pursuant to G.S. 115C-174.11(c) for students in grades three through 12 in a local school
32 administrative unit.

33 (b) Test performance data for students shall be submitted to the Authority by July 15 of
34 each year. The nonpublic school shall retain this data for five years, and the Authority may audit
35 the nonpublic school to ensure compliance with the retention requirement. Test performance data
36 reported to the Authority or collected by the Authority under this section is not a public record
37 under Chapter 132 of the General Statutes, to the extent the data contains personally identifiable
38 information.

39 (c) Tests shall be administered to all eligible students enrolled in grades three and higher
40 whose tuition and fees are paid in whole or in part with scholarship funds.

41 (d) The Authority shall provide the parent or guardian of an eligible student, whose
42 tuition and fees are paid in whole or in part with scholarship funds, an annual written explanation
43 of the student's progress, including the student's scores on standardized achievement tests. If an
44 eligible student received a written assessment pursuant to G.S. 115C-562.5(a)(3) for a school
45 year, the written assessment may be used to meet the requirements of this subsection.

46 (d) Nothing in this section shall prohibit a nonpublic school from administering
47 additional tests to its students."

48 **SECTION 2.(b)** G.S. 115C-598 reads as rewritten:

49 "§ 115C-598. Reporting requirements.

50 (a) The Authority shall report annually, no later than October 15, to the Joint Legislative
51 Education Oversight Committee on the following information from the prior school year:

...

(6) Compliance with the academic assessments required by G.S. 115C-593.5.

...."

PART III. EFFECTIVE DATE

SECTION 3. Subsection (i) of Section 1 of this section is effective July 1, 2023.

Except as otherwise provided, this act becomes effective July 1, 2024, and applies beginning with the 2024-2025 school year.