

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S

1

SENATE BILL 1199*

Short Title: NC Biotechnology and Agriscience School. (Public)

Sponsors: Senators Swindell, Foriest, Brown; Atwater, Davis, Goss, Hartsell, Purcell, and Snow.

Referred to: Education/Higher Education.

May 18, 2010

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE NORTH CAROLINA SCHOOL OF BIOTECHNOLOGY AND
3 AGRISCIENCE TO BE LOCATED AT THE VERNON G. JAMES RESEARCH AND
4 EXTENSION CENTER, AS RECOMMENDED BY THE JOINT LEGISLATIVE
5 JOINING OUR BUSINESSES AND SCHOOLS (JOBS) STUDY COMMISSION.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Chapter 115C of the General Statutes is amended by adding a new
8 Article to read:

9 "Article 15A.

10 "North Carolina School of Biotechnology and Agriscience.

11 **"§ 115C-229A. Establishment of the North Carolina School of Biotechnology and**
12 **Agriscience.**

13 (a) In order to foster, encourage, and promote the development of knowledge and skills
14 in biotechnology and agricultural sciences, the North Carolina School of Biotechnology and
15 Agriscience is established to offer a course of study for a high school diploma and up to two
16 years of college credit, emphasizing the disciplines of science, technology, engineering, and
17 mathematics, with a special focus on biotechnology and agriscience.

18 (b) The School shall be located at the Vernon G. James Research and Extension Center.

19 (c) The School shall be a public school.

20 (d) Except as otherwise provided in this Article, the School is exempt from statutes and
21 rules applicable to a local board of education or local school administrative unit.

22 **"§ 115C-229B. Definitions.**

23 The following definitions apply in this Article.

24 (1) Board. – The Board of Directors of the North Carolina School of
25 Biotechnology and Agriscience.

26 (2) First generation student. – A student who has no parent who has completed a
27 two- or four-year degree.

28 (3) Principal. – The principal of the North Carolina School of Biotechnology
29 and Agriscience.

30 (4) School. – The North Carolina School of Biotechnology and Agriscience.

31 **"§ 115C-229C. Boards of Directors; appointment; terms of office.**

32 (a) Appointment. – There shall be a Board of Directors of the School which shall
33 consist of nine members. Three members shall be appointed by the Governor. The chair of the
34 local board of education for the local school administrative units in Bertie, Chowan, Halifax,
35 Hertford, Tyrrell, and Washington Counties shall each appoint one member to the Board.
36 Appointed members of the Board shall be selected for their interest in and commitment to the



1 importance of public education to regional economic development and to the purposes of the
2 School.

3 (b) Terms. – Members of the Board appointed by the chair of the local board of
4 education in the local school administrative units of Bertie, Chowan, and Halifax Counties, and
5 one of the members appointed by the Governor shall be appointed for an initial term of two
6 years beginning July 1, 2010. Members of the Board appointed by the chair of the local board
7 of education in the local school administrative units of Hertford, Tyrrell, and Washington
8 Counties and two members appointed by the Governor shall be initially appointed for a term of
9 four years beginning July 1, 2010. Subsequent appointments to the Board shall be for a term of
10 four years.

11 (c) Vacancies. – Whenever an appointed member of the Board shall fail for any reason
12 other than ill health or service in the interest of the State or nation to be present at three
13 successive regular meetings of the Board, his or her place as a member of the Board shall be
14 deemed vacant. Any member of the Board may be removed from office by the appointing
15 authority for misfeasance, malfeasance, or nonfeasance in office. All vacancies shall be filled
16 by the appointing authority for the remainder of the term of office.

17 **"§ 115C-229D. Board of Directors; meetings; rules of procedure; officers.**

18 (a) The Board shall meet at least three times a year and may hold special meetings at
19 anytime, at the call of the chair or upon petition addressed to the chair by at least five of the
20 members of the Board. All meetings of the Board shall be subject to the requirements of Article
21 33C of Chapter 143 of the General Statutes.

22 (b) The Board shall elect a chair and a vice-chair, who shall serve a two-year term, from
23 among its members.

24 (c) The Board shall determine its own rules of procedure and may delegate to such
25 committees as it may create such of its powers as it deems appropriate.

26 (d) Members of the Board shall receive such per diem compensation and necessary
27 travel and subsistence expenses while engaged in the discharge of their official duties as is
28 provided by law for members of State boards and commissions.

29 **"§ 115C-229E. Board of Directors; Corporate Powers.**

30 (a) The Board shall be known and distinguished by the name of "North Carolina School
31 of Biotechnology and Agriscience" and shall continue as a body politic and corporate and by
32 that name shall have perpetual succession and a common seal. It shall be able and capable in
33 law to take, demand, receive, and possess all moneys, goods, and chattels that shall be given for
34 the use of the School, and to apply to same according to the will of the donors; and by gift,
35 purchase, or devise to receive, possess, enjoy, and retain forever any and all real and personal
36 estate and funds, of whatsoever kind, nature, or quality the same may be, in special trust and
37 confidence that the same, or the profits thereof, shall be applied to and for the use and purpose
38 of establishing and endowing the School, and shall have power to receive donations from any
39 source whatsoever, to be devoted exclusively to the purposes of the maintenance of the School,
40 or according to the terms of the donation.

41 (b) The Board shall be able and capable in law to bargain, sell, grant, alien, or dispose
42 of and convey and assure to the purchasers any and all such real and personal estate and funds
43 as it may lawfully acquire when the condition of the grant to it or the will of the deviser does
44 not forbid it; and shall be able and capable in law to sue and be sued in all courts whatsoever;
45 and shall have power to open and receive subscriptions; and in general may do all such things
46 as are usually done by bodies corporate and politic, or such as may be necessary for the
47 promotion of learning and virtue.

48 **"§ 115C-229F. Board of Directors; powers and duties.**

49 The Board shall have the following powers and duties:

- 1 (1) Principal. – The Board shall appoint and set the salary of a Principal, who
2 shall serve at the pleasure of the Board, and shall exercise those duties and
3 powers delegated by the Board.
- 4 (2) Academic program. –
5 a. The Board shall establish the standard course of study for the School.
6 This course of study shall set forth the subjects to be taught in each
7 grade and the texts and other educational materials on each subject to
8 be used in each grade. The Board shall design its programs to at least
9 meet the student performance standards adopted by the State Board
10 of Education and the student performance standards contained in this
11 Chapter.
- 12 b. The Board shall conduct student assessments required by the State
13 Board of Education.
- 14 c. The Board shall provide the opportunity to earn or obtain credit
15 towards degrees from a community college subject to Chapter 115D
16 of the General Statutes or a constituent institution of The University
17 of North Carolina.
- 18 d. The Board shall adopt a school calendar consisting of a minimum of
19 180 days of instruction covering at least nine calendar months.
- 20 (3) Admission and continued enrollment of students. – The Board shall establish
21 criteria, standards, and procedures for admission of students. The admission
22 criteria shall give priority to first generation students, and to students who
23 reside in the counties of Bertie, Chowan, Halifax, Hertford, Tyrrell, and
24 Washington. To be eligible to be considered for admission, an applicant
25 shall be either: (i) a legal resident of the State, as defined by
26 G.S. 116-143.1(a)(1), or (ii) a student whose parent is an active duty member
27 of the armed services, as defined by G.S. 116-143.3(2), who is abiding in
28 North Carolina incident to active military duty at the time the student's
29 application is submitted, provided the student shares the abode of that
30 parent. A student's eligibility to remain enrolled in the School shall terminate
31 at the end of any school year during which a student ceases to satisfy the
32 residency requirements. Once a student is admitted to the School, the student
33 shall have the right to continue to attend the School until the student earns a
34 high school diploma or reaches the age of 21, provided the student meets the
35 Board's standards for minimum attendance, academic performance, and
36 conduct.
- 37 (4) Standards of performance and conduct. – The Board shall establish policies
38 and standards for academic performance, attendance, and conduct for
39 students of the School. The policies of the Board shall comply with Article
40 27 of this Chapter.
- 41 (5) School attendance. – Every parent, guardian, or other person in this State
42 having charge or control of a child who is enrolled in the School and who is
43 less than 16 years of age shall cause such child to attend school continuously
44 for a period equal to the time which the School shall be in session. No
45 person shall encourage, entice, or counsel any child to be unlawfully absent
46 from the School. Any person who aids or abets a student's unlawful absence
47 from the School shall, upon conviction, be guilty of a Class 1 misdemeanor.
48 The Principal shall be responsible for implementing such additional policies
49 concerning compulsory attendance as shall be adopted by the Board,
50 including regulations concerning lawful and unlawful absences, permissible

1 excuses for temporary absences, maintenance of attendance records, and
2 attendance counseling.

3 (6) Reporting. – The Board shall comply with the reporting requirements
4 established by the State Board of Education in the Uniform Education
5 Reporting System.

6 (7) Education of children with disabilities. – The Board shall require compliance
7 with laws and policies relating to the education of children with disabilities.

8 (8) Health and safety. – The Board shall require that the School meet the same
9 health and safety standards required of a local school administrative unit.

10 (9) Driving eligibility certificates. – The Board shall apply the rules and policies
11 established by the State Board of Education for issuance of driving
12 eligibility certificates.

13 (10) Purchasing and contracts. – The Board shall comply with the purchasing and
14 contract statutes and regulations applicable to local school administrative
15 units.

16 (11) Employment. – The Board shall appoint all teachers, support, and
17 maintenance staff.

18 a. Teachers of the School shall enjoy all the privileges of public school
19 teachers, including the right to participate in the Teachers' and State
20 Employees' Retirement System and the State Health Plan on the same
21 terms as teachers employed by local boards of education.

22 b. Employees of the Board shall be exempt from Chapter 126 of the
23 General Statutes, except Articles 6 and 7.

24 (12) Exemption from the Administrative Procedures Act. – The Board shall be
25 exempt from Chapter 150B of the General Statutes, except final decisions of
26 the Board in a contested case shall be subject to judicial review in
27 accordance with Article 4 of Chapter 150B of the General Statutes.

28 **§ 115C-229G. State and local funds.**

29 (a) The State Board of Education shall allocate to the School:

30 (1) An amount equal to the average per pupil allocation for average daily
31 membership from the local school administrative unit allotments for each
32 child attending the School, except for the allocation for children with
33 disabilities and for the allocation for children with limited English
34 proficiency.

35 (2) An additional amount for each child attending the School who is a child with
36 disabilities. In the event a child with disabilities leaves the School and
37 enrolls in a public school during the first 60 school days in the school year,
38 the School shall return a pro rata amount of funds allocated for that child to
39 the State Board, and the State Board shall reallocate those funds to the local
40 school administrative unit in which the public school is located. In the event
41 a child with disabilities enrolls in the School during the first 60 school days
42 in the school year, the State Board shall allocate to the School the pro rata
43 amount of additional funds for children with disabilities.

44 (3) An additional amount for children with limited English proficiency attending
45 the School, based on a formula adopted by the State Board.

46 (b) The State Board shall allow for annual adjustments to the amount allocated to the
47 School based on its enrollment growth in school years subsequent to the initial year of
48 operation.

49 (c) For each child who enrolls in the School, the local school administrative unit in
50 which the child resides shall transfer to the School an amount equal to the per pupil amount of
51 all money appropriated to the local current expense fund for the local school administrative unit

1 for the fiscal year. The amount transferred under this subsection that consists of revenue
2 derived from supplemental taxes shall be transferred only if the child enrolled in the School
3 resides in that tax district.

4 (d) Students shall be permitted to enroll in authorized courses offered through The
5 University of North Carolina system free of charge. The enrolling university shall earn student
6 credit hours for such enrollments as part of the semester credit hour enrollment charge funding
7 model.

8 **"§ 115C-229H. Finance and budget.**

9 (a) The Washington County Board of Education shall be the finance agent for the
10 Board and shall have all the rights, duties, and obligations for receipt, accounting, and
11 dispensing funds for the Board, including all the rights, duties, and obligations specified in
12 Article 31 of this Chapter, which powers shall be exercised by the Washington County Board
13 of Education for and on behalf of the Board. The Board shall provide reasonable compensation
14 to the Washington County Board of Education for this service.

15 (b) No later than 10 days after the money is appropriated to their local current expense
16 fund, each local board of education shall transfer to the Board the amount required under
17 G.S. 115C-229G(c) for each child enrolled in the School who resides in that local school
18 administrative unit. Once it has received funds from the local board of education, the Board
19 shall be under no obligation to return the funds.

20 **"§ 115C-229I. Criminal history record checks.**

21 (a) As used in this section:

22 (1) "Criminal history" means a county, state, or federal criminal history of
23 conviction of a crime, whether a misdemeanor or a felony, that indicates an
24 individual (i) poses a threat to the physical safety of students or personnel, or
25 (ii) has demonstrated that he or she does not have the integrity or honesty to
26 fulfill his or her duties as school personnel. These crimes include the
27 following North Carolina crimes contained in any of the following Articles
28 of Chapter 14 of the General Statutes: Article 5A, Endangering Executive
29 and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred
30 Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article
31 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device
32 or Material; Article 14, Burglary and Other Housebreakings; Article 15,
33 Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article
34 18, Embezzlement; Article 19, False Pretense and Cheats; Article 19A,
35 Obtaining Property or Services by False or Fraudulent Use of Credit Device
36 or Other Means; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses
37 Against Public Morality and Decency; Article 26A, Adult Establishments;
38 Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31,
39 Misconduct in Public Office; Article 35, Offenses Against the Public Peace;
40 Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; and
41 Article 60, Computer-Related Crime. These crimes also include possession
42 or sale of drugs in violation of the North Carolina Controlled Substances
43 Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related
44 offenses such as sale to underage persons in violation of G.S. 18B-302 or
45 driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.
46 In addition to the North Carolina crimes listed in this subdivision, such
47 crimes also include similar crimes under federal law or under the laws of
48 other states.

49 (2) "School personnel" means any:

- 50 a. Member of the Board,
51 b. Employee of the School, or

1 c. Independent contractor or employee of an independent contractor of
2 the School if the independent contractor carries out duties
3 customarily performed by school personnel, whether paid with
4 federal, State, local, or other funds, who has significant access to
5 students or who has responsibility for the fiscal management of the
6 School.

7 (b) The Board shall adopt a policy on whether and under what circumstances school
8 personnel shall be required to be checked for a criminal history. The Board shall apply its
9 policy uniformly in requiring school personnel to be checked for a criminal history. The Board
10 may grant conditional approval of an application while the Board is checking a person's
11 criminal history and making a decision based on the results of the check.

12 The Board shall not require school personnel to pay for the criminal history check
13 authorized under this section.

14 (c) The Board shall require the person to be checked by the Department of Justice (i) to
15 be fingerprinted and to provide any additional information required by the Department of
16 Justice to a person designated by the Board, or to the local sheriff or the municipal police,
17 whichever is more convenient for the person, and (ii) to sign a form consenting to the check of
18 the criminal record and to the use of fingerprints and other identifying information required by
19 the repositories. The Board shall consider refusal to consent when making employment
20 decisions and decisions with regard to independent contractors. The fingerprints of the
21 individual shall be forwarded to the State Bureau of Investigation for a search of the State
22 criminal history record file, and the State Bureau of Investigation shall forward a set of
23 fingerprints to the Federal Bureau of Investigation for a national criminal history record check.
24 The Department of Justice shall provide to the Board the criminal history from the State and
25 National Repositories of Criminal Histories of any school personnel for which the Board
26 requires a criminal history check.

27 The Board shall not require school personnel to pay for the fingerprints authorized under
28 this section.

29 (d) The Board shall review the criminal history it receives on an individual. The Board
30 shall determine whether the results of the review indicate that the individual (i) poses a threat to
31 the physical safety of students or personnel, or (ii) has demonstrated that he or she does not
32 have the integrity or honesty to fulfill his or her duties as school personnel and shall use the
33 information when making employment decisions and decisions with regards to independent
34 contractors. The Board shall make written findings with regard to how it used the information
35 when making employment decisions and decisions with regards to independent contractors.
36 The Board may delegate any of the duties in this subsection to the Principal.

37 (e) The Board, or the Principal if designated by the Board, shall provide to the State
38 Board of Education the criminal history it receives on a person who is certificated, certified, or
39 licensed by the State Board of Education. The State Board of Education shall review the
40 criminal history and determine whether the person's certificate or license should be revoked in
41 accordance with State laws and rules regarding revocation.

42 (f) All the information received by the Board through the checking of the criminal
43 history or by the State Board of Education in accordance with this section is privileged
44 information and is not a public record but is for the exclusive use of the Board or the State
45 Board of Education. The Board or the State Board of Education may destroy the information
46 after it is used for the purposes authorized by this section after one calendar year.

47 (g) There shall be no liability for negligence on the part of the Board, or its employees,
48 or the State Board of Education, or its employees, arising from any act taken or omission by
49 any of them in carrying out the provisions of this section. The immunity established by this
50 subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that
51 would otherwise be actionable. The immunity established by this subsection shall be deemed to

1 have been waived to the extent of indemnification by insurance, indemnification under Articles
2 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is
3 waived under the Tort Claims Act, as set forth in Chapter 31 of Chapter 143 of the General
4 Statutes.

5 (h) Any applicant for employment who willfully furnishes, supplies, or otherwise gives
6 false information on an employment application that is the basis for a criminal history record
7 check under this section shall be guilty of a Class A1 misdemeanor."

8 **SECTION 2.** G.S. 114-19.2 reads as rewritten:

9 "**§ 114-19.2. Criminal record checks of school personnel.**

10 (a) The Department of Justice may provide a criminal record check to the local board of
11 education of a person who is employed in a public school in that local school district or of a
12 person who has applied for employment in a public school in that local school district, if the
13 employee or applicant consents to the record check. The Department may also provide a
14 criminal record check of school personnel as defined in G.S. 115C-332 by fingerprint card to
15 the local board of education from National Repositories of Criminal Histories, in accordance
16 with G.S. 115C-332. The information shall be kept confidential by the local board of education
17 as provided in Article 21A of ~~Chapter 115C.~~Chapter 115C of the General Statutes.

18 (a1) The Department of Justice may provide a criminal history record check to the Board
19 of Directors of the North Carolina School of Biotechnology and Agriscience of a person who is
20 employed at the North Carolina School of Biotechnology and Agriscience or of a person who
21 has applied for employment at the North Carolina School of Biotechnology and Agriscience, if
22 the employee or applicant consents to the record check. The Department may also provide a
23 criminal history record check of school personnel as defined in G.S. 115C-229I by fingerprint
24 card to the Board of Directors of the North Carolina School of Biotechnology and Agriscience
25 from National Repositories of Criminal Histories, in accordance with G.S. 115C-229I. The
26 information shall be kept confidential by the Board of Directors of the North Carolina School
27 of Biotechnology and Agriscience as provided in G.S. 115C-229I.

28 (b) The Department of Justice may provide a criminal record check to the employer of a
29 person who is employed in a nonpublic school or of a person who has applied for employment
30 in a nonpublic school, if the employee or applicant consents to the record check. For purposes
31 of this subsection, the term nonpublic school is one that is subject to the provisions of Article
32 39 of Chapter 115C of the General Statutes, but does not include a home school as defined in
33 that Article.

34 (c) The Department of Justice shall charge a reasonable fee for conducting a criminal
35 record check under this section. The fee shall not exceed the actual cost of locating, editing,
36 researching, and retrieving the information.

37 (c1) The Department of Justice may provide a criminal record check to the schools
38 within the Department of Health and Human Services of a person who is employed, applies for
39 employment, or applies to be selected as a volunteer, if the employee or applicant consents to
40 the record check. The Department of Health and Human Services shall keep all information
41 pursuant to this subsection confidential, as provided in Article 7 of Chapter 126 of the General
42 Statutes.

43 (d) The Department of Justice shall adopt rules to implement this section."

44 **SECTION 3.** G.S. 126-5(c1) reads as rewritten:

45 "(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this
46 Chapter shall not apply to:

- 47 (1) Constitutional officers of the State.
- 48 (2) Officers and employees of the Judicial Department.
- 49 (3) Officers and employees of the General Assembly.
- 50 (4) Members of boards, committees, commissions, councils, and advisory
51 councils compensated on a per diem basis.

- 1 (5) Officials or employees whose salaries are fixed by the General Assembly, or
2 by the Governor, or by the Governor and Council of State, or by the
3 Governor subject to the approval of the Council of State.
- 4 (6) Employees of the Office of the Governor that the Governor, at any time, in
5 the Governor's discretion, exempts from the application of the provisions of
6 this Chapter by means of a letter to the State Personnel Director designating
7 these employees.
- 8 (7) Employees of the Office of the Lieutenant Governor, that the Lieutenant
9 Governor, at any time, in the Lieutenant Governor's discretion, exempts
10 from the application of the provisions of this Chapter by means of a letter to
11 the State Personnel Director designating these employees.
- 12 (8) Instructional and research staff, physicians, and dentists of The University of
13 North Carolina, including the faculty of the North Carolina School of
14 Science and Mathematics.
- 15 (8a) Employees of the North Carolina School of Biotechnology and Agriscience.
- 16 (9) Employees whose salaries are fixed under the authority vested in the Board
17 of Governors of The University of North Carolina by the provisions of
18 G.S. 116-11(4), 116-11(5), and 116-14.
- 19 (9a) Employees of the North Carolina Cooperative Extension Service of North
20 Carolina State University who are employed in county operations and who
21 are not exempt pursuant to subdivision (8) or (9) of this subsection.
- 22 (10) Repealed by Session Laws 1991, c. 84, s. 1.
- 23 (11) Repealed by Session Laws 2006-66, s. 9.11(z), effective July 1, 2007.
- 24 (12), (13) Repealed by Session Laws 2001-474, s. 15, effective November 29, 2001.
- 25 (14) Employees of the North Carolina State Ports Authority.
- 26 (15) Employees of the North Carolina Global TransPark Authority.
- 27 (16) The executive director and one associate director of the North Carolina
28 Center for Nursing established under Article 9F of Chapter 90 of the General
29 Statutes.
- 30 (17) Repealed by Session Laws 2004-129, s. 37, effective July 1, 2004.
- 31 (18) Employees of the Tobacco Trust Fund Commission established in Article 75
32 of Chapter 143 of the General Statutes.
- 33 (19) Employees of the Health and Wellness Trust Fund Commission established
34 in Article 21 of Chapter 130A of the General Statutes.
- 35 (20) Repealed by Session Laws 2008-134, s. 73(d), effective July 28, 2008.
- 36 (21) Employees of the Clean Water Management Trust Fund.
- 37 (22) Employees of the North Carolina Turnpike Authority.
- 38 (23) The Executive Administrator and the Deputy Executive Administrator of the
39 State Health Plan for Teachers and State Employees.
- 40 (24) Employees of the State Health Plan for Teachers and State Employees as
41 designated by law or by the Executive Administrator of the Plan.
- 42 (25) The North Carolina State Lottery Director and employees of the North
43 Carolina State Lottery.
- 44 (26) The Executive Director, associate and assistant directors, and instructional
45 staff of the North Carolina Teacher Academy.
- 46 (27) The Chief Administrative Law Judge of the Office of Administrative
47 Hearings.
- 48 (28) The Executive Director and the Assistant Director of the U.S.S. North
49 Carolina Battleship Commission.

1 (29) The Executive Director, Deputy Director, all other directors, assistant and
2 associate directors, and center fellows of the North Carolina Center for the
3 Advancement of Teaching."

4 **SECTION 4.** This act is effective when it becomes law.