

16 NCAC 06C .0408 (Paid Parental Leave)
Proposed Permanent Rule
Fiscal and Regulatory Impact Analysis

Agency: State Board of Education

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Basis for Fiscal Note:

- ✓ Impact on State Funds
- ✓ Impact on Local Government
- ✓ Substantial Economic Impact

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Executive Summary

Session Law 2023-14, Part V—as amended by Session Law 2023-65, Part XIII-A, and Session Law 2023-134, Section 7.83—added Section 126-8.6 to the North Carolina General Statutes. G.S. 126-8.6 provides, for the first time, a statutory paid parental leave (“PPL”) benefit for State employees and employees of other public entities, including the public school system. G.S. 126-8.6(c) directs the State Human Resources Commission (“SHRC”) to adopt rules and policies providing for State employees to receive PPL for up to eight weeks after giving birth to a child and up to four weeks after any other qualifying event (defined as becoming a parent to a child). G.S. 126-8.6(e) directs the “appropriate governing board, officer, or entity” to adopt rules and policies awarding PPL to other employees covered by the law that are “substantially equivalent” to those adopted by the SHRC. As the governing board for the North Carolina public school system, the State Board of Education (“SBE”) is charged with adopting paid parental leave rules for public school employees. The SHRC adopted temporary rules, effective August 25, 2023, and published in the North Carolina Register at 38:06 NCR 354–357. The SBE adopted a temporary rule on October 5, 2023, effective October 27, 2023, and published in the North Carolina Register at 38:10 NCR 639–641.

The SBE is now proposing a permanent rule to replace the temporary rule. The proposed rule clarifies several substantive questions not addressed by prior rules including the effect of an eligible employee placing a newborn child up for adoption or into foster care and the extent to which an otherwise eligible employee is entitled to PPL in the event of a miscarriage or stillbirth. These changes align the proposed permanent rule with the one proposed by the SHRC on February 15, 2024, and published in the North Carolina Register at 38:18 NCR 1205–1208, thus satisfying the statutory requirement that they be “substantially equivalent.” A copy of the proposed SBE rule is included with this fiscal analysis.

Although the SBE previously allowed public school employees to take unpaid leave for up to one calendar year following the birth or adoption of a child, this is the first time public school employees will be entitled to a paid parental leave benefit.¹ G.S. 126-8.6 and the implementing SBE rule will have substantial benefits for public school employees, their families, and the public school system. Research shows that mothers who used PPL had an increase in work hours (which relates to productivity) following the period of leave, an increase that lasted for multiple years.² Research also shows that PPL produces lower infant mortality rates (including a 5.2% decrease in the neonatal mortality rate and a 1.9% decrease in the under-five mortality rate), higher rates of breastfeeding, and more mature early cognitive functioning in infants.³

PPL also serves as a recruitment and retention tool for public school units, which continue to experience chronic teacher shortages.⁴ Public school employees are disproportionately young and female when compared to the State’s labor force as a whole, making this benefit especially attractive and impactful for those already drawn to the education profession. Improved retention rate of public school employees and the ability to attract high quality educators will be of immense benefit to the public school system and to the children of North Carolina; as the North Carolina Supreme Court has recognized, having “a competent, well-trained teacher in every classroom” is a critical component of the constitutional right of every child in this state to receive a “sound basic education.” *See Hoke County Board of Education v. State*, 382 N.C. 386, ¶ 121 (2022). This, in turn, benefits the State as whole, given that, as the North Carolina Chamber of

¹ The SBE still maintains the unpaid parental leave benefit. *See* North Carolina Public Schools Benefits and Employment Policy Manual, Section 8.1.6 (available at <https://www.dpi.nc.gov/documents/district-humanresources/benefits-and-employment-policy-manual>).

² *See* Footnotes 20 and 21 and the accompanying text.

³ *See* Footnotes 25 through 29 and the accompanying text.

⁴ *See* T. Keung Hui, *NC Schools Have More than 3,500 Teaching Vacancies. How Can the State Get More Teachers?*, RALEIGH NEWS & OBSERVER (Sept. 30, 2023), <https://www.newsobserver.com/news/local/education/article278765479.html>.

Commerce has observed, “a skilled and educated workforce is the cornerstone of a strong, healthy economy.”⁵

This fiscal note analyzes the cost of the proposed PPL rule compared to the regulatory baseline, which includes the provisions of G.S. 126-8.6. Arguably, the regulatory baseline should also include those provisions of the rule that are included in the SHRC rules in light of the statutory requirement that the SBE rule be “substantially equivalent” to the SHRC rules. From that baseline, the SBE rules have no fiscal or regulatory impact because the differences between the SBE and SHRC rules are largely technical and do not change the scope or cost of the PPL benefit. Nevertheless, in the interest of transparency and supplementing the limited analysis undertaken by the SHRC regarding the fiscal and regulatory impact of its rule on the public school system, this fiscal note takes the statutory framework as its regulatory baseline.

Compared to the regulatory baseline, the SBE estimates that the proposed rule will have an annual cost of between **\$323,926.20 and \$436,098.40** statewide. This estimate primarily reflects the costs of extending benefits to eligible public school employees in cases involving miscarriage, stillbirth, or the death of a child during birth. It should be noted that this estimate is based on a relatively limited data set and several key assumptions that are detailed below. The actual costs could be higher or lower depending on variables such as utilization of substitute teachers, vacancy rates, future pay increases, and rate of utilization. To help the public school system pay for the PPL benefit, the General Assembly has appropriated \$10,000,000 in recurring funds for the 2023-2024 and 2024-2025 school year for the purpose of hiring substitute teachers.⁶

It must be noted that, unlike the State agencies subject to the SHRC rule who have a single employer (the State of North Carolina), the public school system consists of hundreds of individual employers (115 local school administrative units and approximately 200 charter schools, collectively known as “public school units” or “PSUs”). The number of employees in each PSU varies widely from small systems like Northampton County Schools (~300 employees) to large systems like the Wake County Public School System (~20,400 employees). Accordingly, the cost of PPL will vary substantially across the State, and each PSU will make independent decisions about how to cover any costs associated with PPL not covered by the General Assembly appropriation. At least some PSUs are likely to draw upon local funds appropriated by their local city council or county commission. For that reason, the rule is projected to have some impact on local expenditures.

The proposed rules could generate minimal unquantified cost savings to some public school employers (and corresponding opportunity costs to employees) by limiting the number of times an employee can use PPL in a 12-month period and by establishing a minimum service period before becoming eligible for PPL. In addition, the proposed rule is likely to generate unquantified benefits to all public school units and public school employees in the form of improved clarity for administrative procedures. For example, the proposed rule clarifies that the PPL benefit conferred by G.S. 126-8.6 provides four weeks of paid leave for bonding, available to both birthing parents and non-birthing parents, and four weeks of paid leave for mental and physical recuperation available only to birthing parents. This does not change the amount of leave provided to parents under the statute; it merely bifurcates the leave in a way that will provide clarity for employers and employees and make the program more likely to survive judicial scrutiny. Changes like this, which are discussed throughout this fiscal note, should result in more efficient implementation of the PPL benefit.

The SBE wishes to thank the SHRC for its leadership in developing rules related to PPL and credit much of the content and structure of this fiscal note to research conducted by the Office of State Human Resources

⁵ *Education and Workforce Development*, N.C. CHAMBER OF COMMERCE, <https://ncchamber.com/issue/education-workforce-development/#:~:text=A%20skilled%20and%20educated%20workforce,%2C%20and%20world%2Dclass%20workforce> (last visited Mar. 12, 2024).

⁶ See S.L. 2023-14, Section 5.1.(e); G.S. 115C-336.1(b).

("OSHR"). The SBE has largely adopted the analytical approach used by OSHR and applied that approach to its own data while accounting for unique aspects of the public school system.

Description of Proposed Rule

The proposed rule is designed to cover all substantive areas mandated by statute and by the superseding SHRC rules. It also provides definitions, interpretations, and clarifications in areas that are unique to the public school system. Most of the fiscal and regulatory impact of the proposed rule is attributable directly to the enabling legislation or the implementing SHRC rules (though, once again, the SBE has chosen to use only the enabling legislation as its regulatory baseline). Unlike the SHRC, which has proposed a series of rules within the same section, the SBE has chosen to consolidate its paid parental leave policy into a single rule. The following is a description of each paragraph within the rule:

- Paragraph (a) defines several terms that are used throughout the rule:
 - The definition of "child" closely follows the statutory definition in G.S. 126-8.6(a)(1) but defines it as the child of an "eligible employee" as defined in the SBE rule, rather than a State employee.
 - The rule defines "continuous" and "intermittent" leave for the purpose of establishing the different temporal schemes an eligible employee can use PPL, as set forth in Paragraph (g).
 - The definition of "eligible employee" establishes who may qualify for PPL, consistent with the enabling legislation and SHRC rules.
 - The definition of "parent" aligns with G.S. 126-8.6(a)(2) but adds the word "birth" (which is implicit in the statute's term "legal placement") to avoid staff concluding that only adoption or foster care, not childbirth, entitles an eligible employee to PPL.
 - The definition of "public school unit" or "PSU" aligns with the statutory definition in G.S. 115C-5(7a) but clarifies that the rule shall only apply to a charter school if the school's board of directors has chosen to offer PPL, consistent with G.S. 115C-218.90(a)(6). It also establishes a deadline for charter schools to "opt in" each year.
 - The definition of "qualifying event" aligns with the statutory definition in G.S. 126-8.3(a)(3) but substitutes the term "eligible employee" for "State employee."
- Paragraph (b) defines the eligibility requirements for a public-school employee to be entitled to PPL, requirements that are consistent with the enabling legislation and SHRC rules.
 - It establishes a minimum period of service and clarifies that, consistent with G.S. 126-8.6(c1), an employee may aggregate periods of service across PSUs or with other state agencies offering PPL to satisfy the minimum period of service. It also clarifies, consistent with G.S. 115C-218.90(a)(6), that service in a charter school will not count toward the minimum period of service *unless* that charter school offers PPL.
 - The rule also provides that certain events will not constitute a "break in service" for purposes of calculating the minimum service period, including:
 - Time the employee was receiving workers' compensation or on short-term disability;
 - Time the employee was on leave without pay;
 - Time the employee was absent due to military service;
 - Time in between contracts for 10- or 11-month employees (common in public schools that operate on 10-month academic calendars); or

- Any time between when an employee transitioning from one employer offering PPL to another employer offering PPL, provided it does not exceed 31 days.⁷
- Paragraph (c) establishes the structure of PPL, including the amount of PPL for full-time employees. These provisions are consistent with parallel provisions in the SHRC rules. Specifically:
 - Subparagraph (c)(1) fulfills the legislative requirement to adopt rules providing that full-time employees may take “[u]p to eight weeks of paid leave after giving birth to a child,” which is divided into four weeks for “physical and mental recuperation” and four weeks for “bonding with the child.”
 - Subparagraph (c)(2) fulfills the legislative requirement to adopt rules providing that or “[u]p to four weeks of paid leave after any other qualifying event.” G.S. 126-8.6(b).
 - The structuring of the leave to provide for four weeks for mental and physical recuperation and four weeks for bonding is consistent with the SHRC rules and is intended to ensure the rule passes legal scrutiny. Courts have upheld parental leave programs that offer leave to birth parents for physical recovery while providing a different amount of leave to all parents for bonding with the new child.⁸
- Paragraph (d) establishes how leave is prorated for part-time employees and is consistent with parallel provisions in the SHRC rules.
 - This provision clarifies that, unlike other employee benefits, PPL is not limited to part-time employees who work half-time or more.
 - This provision also fulfills the legislative requirement to adopt rules providing that part-time employees “may take a prorated amount of paid leave after giving birth, not to exceed eight weeks, or paid leave after any other qualifying event, not to exceed four weeks.” G.S. 126-8.6(c).
 - This provision establishes that the prorated amount shall be determined based on hours worked in the part-time employee’s schedule, compared to a full-time employee in a similar position at the same PSU.
- Paragraph (e) explains how leave will be administered when an eligible employee gives birth to a child and places the child up for adoption or into foster care. The provisions of this paragraph are consistent with those included in the SHRC rules.
 - In this situation, the birthing parent will be entitled to four weeks of leave for physical and mental recuperation because the birthing parent must still recover from the physical trauma of childbirth,
 - Neither parent will be entitled to four weeks of leave for bonding with the child, as the child will not be present.

⁷ The 31-day limit is consistent with other SBE policies, which allow an employee to transfer annual and bonus leave balances upon separation from an LSAU if the employee obtains new employment with another LSAU, community college, or State agency within 31 days.

⁸ See, e.g., *California Fed. Sav. & Loan Ass’n v. Guerra*, 479 U.S. 272, 290 (1987) (noting that leave could be provided to pregnant women where the statute is drawn to cover the period of physical disability); *Johnson v. Univ. of Iowa*, 431 F.3d 325, 328 (8th Cir. 2005) (holding that “[i]f the leave given to biological mothers is granted due to the physical trauma they sustain giving birth, then it is conferred for a valid reason wholly separate from gender.”). See also U.S. Equal Employment Opportunity Commission, *Enforcement Guidance on Pregnancy Discrimination and Related Issues* (2015), https://www.eeoc.gov/laws/guidance/enforcement-guidance-pregnancy-discrimination-and-related-issues#_ftnref124, Example 14 n. 124.

- Paragraph (f) explains how leave will be administered in the event of a miscarriage or the death of a child during or immediately following birth. The provisions of this paragraph are consistent with those included in the SHRC rules and fulfills the legislative requirement to adopt rules providing “how much leave is to be provided in the event of miscarriage or the death of a child during birth.” G.S. 126-8.6(c1).
 - Subparagraph (f)(1) provides that when a fetus dies before the completion of the 12th week of pregnancy, it is not a qualifying event for PPL.
 - Subparagraph (f)(2) provides that when a fetus dies after the completion of the 12th week of pregnancy but prior to birth, the birthing parent receives four weeks of paid leave for physical and mental recuperation, but neither parent receives four weeks of leave for bonding with the child. Notwithstanding the tragedy of the situation, the bonding period is rendered moot by the child’s death.
 - Subparagraph (f)(3) provides that when a child dies after a completed birth, both parents are entitled to the full amount of leave available to them under either Paragraph (c) or (d).

- Paragraph (g) clarifies that PPL is compensated at 100 percent of the eligible employee’s regular weekly pay and does not include overtime pay. This is an especially important provision for public school employees, many of whom work a regular 8-hour workday and then work additional hours in another role (such as a teaching assistant who also drives a school bus, or a classroom teacher who also serves as a coach for an athletic team).

- Paragraph (h) describes how PPL interacts with other leave balances and provides administrative clarity for PSUs. Specifically, it establishes that PPL:
 - Cannot be counted against or deducted from other accrued leave;
 - Must be reported by the PSU separately from all other leave;
 - Does not accrue, cannot be donated to another employee, and cannot be used for calculating retirement benefits; and
 - Runs concurrently with any leave to which the employee may be entitled under the Family and Medical Leave Act (“FMLA”) provided the PSU provides requisite notice.

- Paragraph (i) sets forth procedures for an eligible employee to request PPL and is largely consistent with rules established by the SHRC.
 - Subparagraph (i)(1) provides that an employee may use PPL anytime during the 12 months following the qualifying event on an intermittent or continuous basis.⁹ Unlike the SHRC rules, the SBE rule does not require PSU approval of an employee’s request to use PPL on an intermittent basis and does not allow a PSU to delay a PPL request from a non-birthing parent on the basis of a “public safety concern.”¹⁰
 - Subparagraph (i)(2) requires an employee to provide advanced notice to the PSU of the employee’s intent to use PPL, at least 10 weeks in advance where possible. The SBE did not mandate a specific period of notice in recognition of the fact that, while approximate dates for births and some adoptions can be anticipated well in advance, other adoptions and most foster placements occur with very short notice.
 - Subparagraph (i)(3) clarifies that PPL may be used only once for a qualifying event during a 12-month period. Multiple births (such as twins or triplets), multiple adoptions, or multiple foster placements within the same period do not entitle an eligible employee to multiple awards of PPL.

⁹ See the definitions for “intermittent” and “continuous” leave in Paragraph (a).

¹⁰ See p. 35 ((8) Employee Discretion to Use PPL Anytime During 12-Month Period).

- Subparagraph (i)(4) provides that if both parents are employed by the same PSU, they must be allowed to take their PPL simultaneously if requested.¹¹
- Subparagraph (i)(5) provides that an eligible employee shall forfeit any unused PPL 12 months after the qualifying event.
- Paragraph (j) clarifies that PPL is available only for qualifying events occurring on or after July 1, 2023. This is consistent with the statutory instruction in G.S. 126-8.6(b)(2) that an employee may take leave following “any other qualifying event.”¹² It also clarifies that nothing in the rule prohibits an employer from offering additional PPL beyond what is required by the rule.

Impact Analysis

This section analyzes the amount of funds that will be expended or distributed because of the proposed rule, explains how that amount was computed, and discerns and analyzes the impacts attributed to the rule.

¹¹ Dual employment is common in PSUs, where married couples often teach or work at the same school or in the same district. However, the SBE anticipates that most couples will choose to stagger their use of PPL to reduce the need for childcare during the first few months after the child’s birth or placement.

¹² S.L. 2023-14, Section 5.1.(f), provided that G.S. 126-8.6 “becomes effective July 1, 2023, and applies to requests for paid parental leave related to births occurring on or after that date.” When read in isolation, this provision could be interpreted to exclude adoptions or foster care placements occurring after July 1, 2023, if the children involved in those foster placements or adoptions were born before July 1, 2023. Consistent with the rules adopted by the SHRC, the SBE rule provides that PPL is available for “qualifying events occurring on or after July 1, 2023.” Accordingly, an otherwise eligible employee would be entitled to PPL for an adoption or foster care placement that occurs after July 1, 2023, even if the child was born prior to that date.

This clarification is consistent with a holistic interpretation of G.S. 126-8.6. G.S. 126-8.6(b)(2) provides that an employee may take leave following “any other qualifying event.” In the broader context of the PPL, the reference to “births” in the effective date provision is illustrative, not restrictive. The other references in the statute to becoming a parent mention the term “qualifying event,” which includes adoptions and foster placements. *See* G.S. 126-8.6(a)(2), (a)(3), (b)(2), (c). The definition of “parent” in G.S. 126-8.6(a)(2) specifically mentions adoptive and foster parents but does not mention birth parents at all. For these reasons, it is appropriate to interpret “qualifying event” broadly. It should be noted that this provision appeared in the temporary rules and was approved by RRC without any expressed concern from RRC staff counsel.

Given the challenges of collecting reliable PPL usage data for all public-school employees, which will be discussed in greater detail below, the SBE does not have reliable data regarding the potential impact of this clarification. The SBE temporary rule on PPL has been in effect for less than five months and only applies to qualifying events that have occurred in the last nine months. It is unknown how many public school employees were eligible for PPL within this time period based on an adoption or foster care placement taking place after July 1, 2023 and involving a child born prior to that date. According to OSHR data as reported in its PPL fiscal note, 22 State employees took PPL for adoptions in the calendar year 2022 and 33 State employees took PPL for foster placements or guardianships. There are approximately 3.14 times as many public school employees as there are State employees (55,319 vs. 173,833 based on 2023 data). Assuming a proportional number of public school employees take PPL for adoptions and foster care placements in fiscal year 2023-2024, approximately 69 public school employees statewide will take PPL for adoptions and 104 will take PPL for foster care placements. As explained in greater detail below, the estimated cost of PPL for four weeks (the maximum that would be awarded under these circumstances), is between \$2,340 and \$2,740. Therefore, assuming that all the children in question were all born before July 1, 2023, but adopted or placed with the eligible employee on or after that date, the approximate additional cost of interpreting the statute in this manner would be between \$404,820 and 474,026.

It is worth noting that these estimates are at best a snapshot in time and not an enduring forecast of the annual cost of this provision; as more time passes following the July 1, 2023 effective date for PPL, fewer and fewer children born prior to that date will be adopted (by July 1, 2041, the date a child born July 1, 2023 turns 18, this scenario will become entirely moot).

Persons Affected

The persons subject to, or affected by, the proposed SBE rule are public school units providing PPL under G.S. 126-8.6 and all permanent employees of those PSUs.

Table 1 – Full-Time Personnel: Local School Administrative Units (“LSAUs”)¹³

| - | Activity Assignment Classification | Total Employees | Male Employees | Female Employees |
|--------------------|------------------------------------|-----------------|----------------|------------------|
| Administrators | Official Adms., Mgrs. | 2,330 | 858 | 1,447 |
| | Principals | 2,459 | 899 | 1,531 |
| | Asst. Principals, Nonteaching | 3,233 | 1,016 | 2,139 |
| Subtotal | | 8,022 | 2,773 | 5,117 |
| Teachers | Elementary Teachers | 47,365 | 4,957 | 40,415 |
| | Secondary Teachers | 27,311 | 9,716 | 16,546 |
| | Other Teachers | 17,752 | 3,753 | 13,342 |
| Subtotal | | 92,428 | 18,426 | 70,303 |
| Professionals | Guidance | 4,331 | 513 | 3,734 |
| | Psychological | 771 | 85 | 659 |
| | Librarian, Audiovisual | 2,041 | 136 | 1,885 |
| | Consultant, Supervisor | 2,085 | 286 | 1,752 |
| | Other Professional | 9,471 | 1,176 | 7,925 |
| Subtotal | | 18,699 | 2,196 | 15,955 |
| Others | Teacher Assistants | 22,072 | 2,535 | 18,355 |
| | Technicians | 1,882 | 1,074 | 701 |
| | Clerical, Secretarial | 9,911 | 435 | 8,798 |
| | Service Workers | 18,631 | 5,820 | 11,567 |
| | Skilled Crafts | 2,926 | 2,565 | 265 |
| | Laborers, Unskilled | 410 | 249 | 141 |
| Subtotal | | 55,832 | 12,678 | 39,827 |
| Grand Total | | 174,981 | 36,073 | 131,202 |

¹³ North Carolina Public School Statistical Profile – Table 16, <http://apps.schools.nc.gov/ords/f?p=145:21:::NO::> (last visited Mar. 18, 2024). Data is current as of the 2023-2024 school year.

Table 2 – Full-Time Personnel: Charter Schools¹⁴

| - | Activity Assignment Classification | Total Employees | Male Employees | Female Employees |
|--------------------|------------------------------------|-----------------|----------------|------------------|
| Administrators | Official Adms., Mgrs. | 440 | 129 | 292 |
| | Principals | 281 | 91 | 184 |
| | Asst. Principals, Nonteaching | 348 | 101 | 240 |
| Subtotal | | 1,069 | 321 | 716 |
| Teachers | Elementary Teachers | 5,035 | 627 | 4,228 |
| | Secondary Teachers | 3,026 | 892 | 2,000 |
| | Other Teachers | 1,387 | 286 | 1,041 |
| Subtotal | | 9,448 | 1,805 | 7,269 |
| Professionals | Guidance | 307 | 37 | 257 |
| | Psychological | 26 | 9 | 16 |
| | Librarian, Audiovisual | 68 | 19 | 47 |
| | Consultant, Supervisor | 186 | 37 | 142 |
| | Other Professional | 715 | 141 | 549 |
| Subtotal | | 1,302 | 243 | 1,011 |
| Others | Teacher Assistants | 1,898 | 172 | 1,610 |
| | Technicians | 75 | 53 | 20 |
| | Clerical, Secretarial | 499 | 16 | 432 |
| | Service Workers | 480 | 179 | 250 |
| | Skilled Crafts | 66 | 46 | 15 |
| | Laborers, Unskilled | 92 | 38 | 41 |
| Subtotal | | 55,832 | 12,678 | 39,827 |
| Grand Total | | 174,981 | 36,073 | 131,202 |

Regulatory Baseline

In this impact analysis, the impact of the proposed rule is measured against a baseline that includes G.S. 126-8.6 and 126-5(c19), including statutory provisions mandating certain substantive requirements for the rules.¹⁵ As a result, the following statutory components are part of the regulatory baseline assumed in this analysis:

- PPL is available to parents of “a newborn biological child or a newly placed adopted, foster, or otherwise legally placed child under the age of 18.” G.S. 126-8.6(a)(1). An eligible employee

¹⁴ North Carolina Public School Statistical Profile – Table 16.1, <http://apps.schools.nc.gov/ords/f?p=145:26:::NO:::> (last visited Mar. 18, 2024). Data is current as of the 2023-2024 school year.

¹⁵ As previously discussed, the SBE arguably could use the SHRC rules as part of its regulatory baseline but has elected not to do so for purposes of this analysis.

becomes a “parent” under the PPL program not only because of childbirth, but also following “adoption, foster care, or another legal placement.” G.S. 126-8.6(a)(2).

- PPL is available to “permanent, probationary, or time-limited” employees. G.S. 126-8.6(b), (c).
- The PPL entitlement for full-time employees is “(1) Up to eight weeks of paid leave after giving birth to a child;” or “(2) Up to four weeks of paid leave after any other qualifying event.” G.S. 126-8.6(b)(1)-(2). PPL for part-time employees is prorated. G.S. 126-8.6(c).
- PPL is available without exhaustion of sick leave, has no cash value upon termination of employment, and may not be used for calculating retirement benefits. G.S. 126-8.6(d).
- PPL is available to all public school employees.
- The SBE rule implementing PPL for public school employees must “provid[e] for a period of minimum service before an employee becomes eligible for parental leave” and establish “the maximum number of uses of paid parental leave within a 12-month period.” G.S. 126-8.6(c1). The statute requires only that the rule establish a number on each of these topics, rather than setting the numbers that must appear in the rule. Therefore, the regulatory baseline includes only the duty to set a period of minimum service and a maximum number of uses, rather than including the period and number set in the proposed rules.
- The SBE rule must also “provide that the period of minimum service may be met by aggregating employment at” (1) “State agencies, departments, and institutions, including The University of North Carolina; (2) “Public school units that provide paid parental leave in accordance with this section;” and “(3) Community colleges located in this State.” G.S. 126-8.6(c1)(1)-(3). This component is part of the regulatory baseline, codified in Paragraph (b) of the proposed SBE rule.
- The SBE rule must provide for “how much leave is to be provided in the event of miscarriage or the death of a child during birth.” G.S. 126-8.6(c1). The statute requires only that the rule establish how much leave is to be provided, rather than setting the amount of leave. Therefore, the regulatory baseline includes only the duty to provide leave “in the event of miscarriage or the death of a child during birth,” rather than including the specific threshold and amount of leave set in the proposed rule.

By including the statutorily required components of the PPL benefit in the regulatory baseline, this impact analysis focuses on those aspects of the SBE rule that go beyond the statute, including those required to maintain “substantial equivalence” with the SHRC rules.

Time Frame, Data Source, and Labor Market

This analysis involves projections based on a limited amount of data regarding the anticipated usage of the PPL benefit due to the short time that the benefit has been in effect for public school employees as well as the decentralized administrative structure of the public school system.

On the first point, the temporary SBE rule for PPL has only been in effect since October 27, 2023, and the benefit has only been available for qualifying events occurring on or after July 1, 2023. Accordingly, as of the publication of this analysis, the benefit will have been in effect for less than 12 months. Unlike State employees covered by Executive Order 95, there is no pre-existing and comparable benefit for public school employees that can provide comparative data.

On the second point, unlike OSHR, which administers the PPL benefit for all State employees, the public school system consists of hundreds of distinct employers (115 local school administrative units and over 200 charter schools), each of which administer PPL for their respective employees. In addition, employees are paid from a variety of funding sources, including federal, state, and local funds. In most local school

administrative units, a licensed educator’s total compensation typically includes a combination of State-funded salary and a local supplement.¹⁶

Due to the practical challenges of collecting and analyzing usage data from so many different employers using a variety of funding sources, this analysis has considered data from a representative sample of employers on PPL usage and cost since July 1, 2023, and used that to extrapolate projected usage and cost for a 12-month period. The SBE collected data from the following sources to inform its analysis:

- Davie County Schools (“DCS”)
- Buncombe County Schools (“BCS”)
- Cumberland County Schools (“CCS”)
- Northampton County Schools (“NCS”)
- Onslow County Schools (“OCS”)
- Randolph County Schools (“RCS”)
- Wake County Public School System (“WCPSS”)

As previously noted, North Carolina continues to experience a significant teacher shortage, with an estimated 2,840 instructional vacancies at the start of the 2023-2024 school year, or approximately 3% of the teaching force.¹⁷ In addition, the teacher attrition rate (a measure of the number of teachers leaving the education profession) for the 2021-2022 school year stood at 7.78% for all teachers and 12.71% for beginning teachers.¹⁸ Accordingly, the calculations used in this analysis may underestimate the long-term cost of PPL should the education workforce be fully staffed and the attrition rate reduced. Although the SBE does not have reliable data on the vacancy and attrition rates among non-teacher public school employees, any decrease in the vacancy rate moving forward would have similarly additive effects to the costs associated with PPL.

Analysis of Costs and Benefits

The proposed rule will have only a small impact on the regulatory baseline given that many aspects of the proposed rule are expressly required by G.S. 126-8.6, thus removing any discretion for the SHRC (and by extension the SBE). In addition, the General Assembly has attempted to offset the cost associated with the group comprising most public-school employees—classroom teachers—by appropriating \$10 million in recurring funds for the purpose of hiring substitute teachers.

Benefits of PPL

Balancing Work and Family Obligations

PPL allows new parents necessary time away from work to recover from childbirth, bond with a new child, and manage new caregiving responsibilities. A formal paid PPL benefit, rather than the unpaid leave previously available under SBE policy, can help public-school employees feel more comfortable taking the

¹⁶ Local supplements range widely from zero in three districts (Caswell County, Graham County, and Weldon City Schools) to an average of \$10,650 for teachers and \$39,701 for principals in Chapel-Hill Carrboro City Schools. North Carolina Public School Statistical Profile – Table 20, <http://apps.schools.nc.gov/ords/f?p=145:25:::NO::> (last visited Mar. 18, 2024). Data is current as of the 2023-2024 school year. These absolute differences in local supplements do not account for geographic variations in cost of living, which often reduces the *relative* differences across districts.

¹⁷ Mebane Rash, *Data Released on Back to School Vacancies*, EDNC (Sept. 6, 2023), <https://www.ednc.org/data-released-on-back-to-school-vacancies/>.

¹⁸ *Id.* Data for the 2022-2023 school year has not been reported as of the date of this fiscal note.

time to heal, bond, and care after birth, which allows employees to better balance their work and family obligations.¹⁹

Researchers analyzing the effect of California’s paid family leave program found that providing paid parental leave increases the likelihood that the mother would take leave by approximately 6% to 7% and the length of the leave taken by approximately three weeks.²⁰ The researchers found evidence that mothers who utilized paid parental leave experience a subsequent increase in work hours (which relates productivity) and income that lasted one to three years after the birth of the child. The estimated work hours increased by 6% to 9% for mothers who previously took PPL, or approximately 2 to 3 additional hours of additional work; these increases were statistically significant for mothers of children aged 1, 2, and 3. There was also a positive difference in wage income for mothers who took PPL, although this difference was not statistically significant.²¹ These findings point to a long-lasting boon to the mothers’ work availability and resulting productivity as a result of PPL.

Other research has found that paid parental leave also increases the likelihood that a father will take leave by approximately 1%.²² The researchers noted that taking PPL was more common in “occupations with higher female employment . . . possibly because those occupations have less stigma associated with taking leave.” This finding is noteworthy for the SBE rule, given that approximately 78% of public school employees are female.²³

When employees can use PPL, instead of exhausting other forms of paid leave or taking leave without pay, they gain the flexibility to use those other forms of leave for the other needs of daily life. New parents face new financial obligations to care for their children; having to exhaust other forms of paid leave and potentially resort to leave without pay could cause financial hardship for parents, which is especially noteworthy in a profession with notoriously low pay.²⁴ For new parents, PPL can provide reassurance that their take-home pay can continue after their new child arrives.

¹⁹ See American Psychological Association, *How Employers Can Support Paid Parental Leave* (Apr. 1, 2022), <https://www.apa.org/monitor/2022/04/employers-support-parental-leave>.

²⁰ U.S. Bureau of Labor Statistics, “How Paid Family Leave Affects Mothers in the Labor Force,” *Monthly Labor Review* (Mar. 2022), p. 66, <https://www.bls.gov/opub/mlr/2012/03/precis.pdf> (summarizing the research by Maya Rossin-Slater, et al. cited in the next footnote).

²¹ For the statistics cited in last four sentences, see Maya Rossin-Slater et al., *The Effects of California’s Paid Family Leave Program on Mothers’ Leave-Taking and Subsequent Labor Market Outcomes*, National Bureau of Economic Research Working Paper 17715, (Dec. 2011), <https://www.nber.org/papers/w17715>, pages 17, 18, and 32 of PDF, including Table 6.

²² U.S. Bureau of Labor Statistics, “Does Paid Family Leave Increase Leave Taking Among Fathers?” *Beyond BLS* (Feb. 2016) <https://www.bls.gov/opub/mlr/2016/beyond-bls/does-paid-family-leave-increase-leave-taking-among-fathers.htm> (summarizing Ann Bartel et al., *Paid Family Leave, Fathers’ Leave-Taking, and Leave-Sharing in Dual-Earner Households*, National Bureau of Economic Research Working Paper 21747, (Nov. 2015), <http://www.nber.org/papers/w21747.pdf>).

²³ See Tables 1 and 2.

²⁴ The average salary for all teachers in North Carolina in the 2022-2023 school year was \$57,805, while the average salary for a starting teacher was just \$37,127. See Mebane Rash, *Comprehensive Report on the History, Structure, and Status of Teacher Pay in NC Released*, EDNC (March 9, 2023), <https://www.ednc.org/03-09-2023-comprehensive-report-on-the-history-structure-and-status-of-north-carolina-teacher-pay-released/>. That places North Carolina 34th in the nation for average teacher pay and 46th in beginning teacher pay. See T. Keung Hui, *NC Ranks Near the Bottom in the US in Pay for Beginning Teachers. How Far Behind Is It?*, RALEIGH NEWS & OBSERVER (May 4, 2023), <https://www.newsobserver.com/news/local/education/article274845931.html>.

Benefits to Children

A recent analysis published in the journal for the American Psychological Association gathered evidence showing significant benefits of PPL for children. The analysis found that “[p]aid leave is associated with lower infant mortality rates and higher rates of vaccination, especially for families below the poverty line.”²⁵ Another study found that “[p]aid maternity leave was associated with a 5.2% decrease in the neonatal mortality rate, a 2.4% decrease in the infant mortality rate, and a 1.9% decrease in the under-five mortality rate after two years of adoption, when accounting for country-specific time trends,” statistics deemed statistically significant.²⁶ The analysis noted higher rates of breastfeeding among mothers with access to PPL, which has health benefits for children and saves medical expenses.²⁷ A study found that paid maternal leave is associated with a distinct profile of brain activity in infants, which could be associated with more mature early cognitive functioning.²⁸ PPL has been associated with better language skills in toddlers and fewer infant behavioral problems.²⁹

Distinctive Benefit That Can Serve as a Recruitment and Retention Tool

Paid parental leave can also be an important recruitment and retention tool. Paid parental leave allows public-sector employers to differentiate themselves in the job market from other employers. In March 2023, only 39% of management, professional, and related workers nationwide had access to paid family leave benefits.³⁰ For sales and office employees, this figure was 29%. This suggests that paid parental leave offers public school employees a job benefit that most competing private-sector employers currently do not offer. The benefit will also ensure North Carolina remains competitive with other states in attracting high quality teachers. At least three other southern states—Oklahoma, South Carolina, and Tennessee—adopted a paid parental leave program for educators in 2023.³¹

If the public school system can differentiate itself using PPL as a distinctive employee benefit, it would realize significant benefits from better recruitment and retention. Better recruitment should improve consistency and quality of education provided to the children of the State. Better retention ultimately saves public school units time and resources spent on hiring and training. The true costs of losing an employee include lost productivity from the screening and interviewing process, the cost of training a new employee, a differential in productivity as the new employee is trained, and an increased chance of cost from errors while the new employee has not yet gained expertise. Estimates of retraining and onboarding costs range from tens of thousands of dollars to twice the employee’s annual salary.³²

²⁵ Zara Abrams, “The Urgent Necessity for Paid Parental Leave,” *APA Monitor* 53:3 (Apr. 1, 2022), available at <https://www.apa.org/monitor/2022/04/feature-parental-leave>.

²⁶ M.S. Khan et al., “Paid Family Leave and Children Health Outcomes in OECD Countries,” *Children and Youth Services Review* (Sept. 2020), available at <https://www.sciencedirect.com/science/article/pii/S0190740920306514?via%3Dihub>.

²⁷ Zara Abrams, “The Urgent Necessity for Paid Parental Leave,” cited above in footnote 34.

²⁸ Natalie H. Brito et al., “Paid Maternal Leave is Associated with Infant Brain Function at 3-Months of Age,” available at <https://osf.io/preprints/psyarxiv/t4zvn>.

²⁹ Zara Abrams, “The Urgent Necessity for Paid Parental Leave,” cited above in footnote 34.

³⁰ U.S. Bureau of Labor Statistics, *What Data Does the BLS Publish on Family Leave?* (last modified Sept. 21, 2023), Chart 4, <https://www.bls.gov/ebs/factsheets/family-leave-benefits-fact-sheet.htm>.

³¹ Madeline Will, *Paid Parental Leave for Teachers is Happening in More States and Districts*, Education Week (Jun. 22, 2023), <https://www.edweek.org/teaching-learning/paid-parental-leave-for-teachers-is-happening-in-more-states-and-districts/2023/06>.

³² Josh Bersin, Global Industry Analyst for Deloitte, “Employee Retention Now a Big Issue: Why the Tide Has Turned” (Aug. 16, 2013), <https://www.linkedin.com/pulse/20130816200159-131079-employee-retention-now-a-big-issue-why-the-tide-has-turned/?irgwc=1>.

Statistics on Use of PPL by Public School Employees

Although available for less than 12 months as of the publication of this fiscal note, the PPL program implemented under the SBE temporary rule, 16 NCAC 06C .0408, has already seen frequent utilization in the public school system. Table 3 below shows utilization of PPL by employees of the representative LSAUs as of March 1, 2024.

Table 3 – PPL Usage in Representative LSAUs (July 1, 2023 – March 1, 2024)

| PSU Name | Total Employees | Number of Employees Awarded PPL | Number of Full-Time Employees Awarded PPL | Number of Part-Time Employees Awarded PPL | Number of Birthing Employees Awarded PPL | Number of Non-Birthing Employees Awarded PPL |
|----------------------------------|-----------------|---------------------------------|---|---|--|--|
| Buncombe County Schools | 3,385 | 32 | 32 | 0 | 23 | 9 |
| Cumberland County Schools | 6,894 | 61 | 59 | 2 | 59 | 2 |
| Davie County Schools | 826 | 9 | 7 | 2 | 7 | 2 |
| Northampton County Schools | 306 | 4 | 4 | 0 | 4 | 0 |
| Onslow County Schools | 3,708 | 62 | 62 | 0 | 53 | 9 |
| Randolph County Schools | 2,149 | 39 | 39 | 0 | 29 | 10 |
| Wake County Public School System | 20,412 | 230 | 230 | 0 | 190 | 40 |
| TOTAL | 37,680 | 437 | 433 | 4 | 365 | 72 |

Two observations immediately stand out from this data. First, of the 437 employees taking PPL during the relevant period, the number of employees taking leave after giving birth to a child (365) was significantly higher than the number taking birth for another qualifying event (72), amounting to approximately 83% of the total number of PPL beneficiaries. This is unsurprising given that, as previously discussed, 78% of public-school employees are female.

Second, utilization of PPL was quite low among part-time employees. Although each representative PSU employs a significant number of part-time employees, amounting to 3,069 employees or approximately 8% of the total workforce across all seven districts, only 4 part-time employees took PPL, or less than 1% of the total PPL beneficiaries. Although the exact cause of this discrepancy are unknown, plausible explanations could include: (1) part-time employees already work fewer hours, and therefore may have less need for PPL to accommodate their childcare needs; and (2) part-time employees, which often include retirees returning to work on a part-time basis, tend to skew older than full-time employees.

In an effort to develop an estimate for utilization of PPL in a standard (12-month) fiscal year, Table 4 projects estimated usage of PPL in each of the representative PSUs by dividing data in Table 3 by eight (the number of months covered by the available data) and multiplying that number by 12.³³

³³ This calculation assumes a static total employment from March 1 to July 1, 2024.

Table 4 – Estimated PPL Usage in Representative LSAUs (July 1, 2023 – July 1, 2024)

| PSU Name | Total Employees | Number of Employees Awarded PPL (Projected) | Number of Full-Time Employees Awarded PPL (Projected) | Number of Part-Time Employees Awarded PPL (Projected) | Number of Birthing Employees Awarded PPL (Projected) | Number of Non-Birthing Employees Awarded PPL (Projected) |
|----------------------------------|-----------------|---|---|---|--|--|
| Buncombe County Schools | 3,385 | 48 | 48 | 0 | 34.5 | 13.5 |
| Cumberland County Schools | 6,894 | 93 | 88.5 | 3 | 88.5 | 3 |
| Davie County Schools | 826 | 13.5 | 10.5 | 3 | 10.5 | 3 |
| Northampton County Schools | 306 | 6 | 6 | 0 | 6 | 0 |
| Onslow County Schools | 3,708 | 93 | 93 | 0 | 79.5 | 13.5 |
| Randolph County Schools | 2,149 | 58.5 | 58.5 | 0 | 43.5 | 15 |
| Wake County Public School System | 20,412 | 345 | 649.5 | 0 | 285 | 60 |
| TOTAL | 37,680 | 655.5 | 954 | 6 | 547.5 | 108 |

Admittedly, this calculation does not account for seasonal variations in usage rates that result from seasonal variations in birth rates in the United States in general.³⁴ It also does not account for a possible increase in PPL utilization as awareness of the benefit increases over time, though the exact effect of this factor is impossible to measure.

Using this representative data, Table 5 projects an estimated utilization rate among public school units statewide for the 2023-2024 school year. To reach this result, the total number of employees of the representative districts was divided by the total number of LSAU employees statewide.³⁵ The total number of employees projected to be awarded PPL in the representative districts (Table 4) was then divided by the resulting quotient (0.215), resulting in an estimate of approximately **3,049** public school employees being awarded PPL during the 2023-2024 school year.

³⁴ See Lyndsey A. Darrow et al., *Seasonality of Birth and Implications for Temporal Studies of Preterm Birth*, 20 EPIDEMIOLOGY 699 (2009) (noting that, over the past 50 years, “the annual pattern of birth in the United States has been characterized by a peak during August–September and a trough during April–May, with southern latitudes showing more pronounced spring troughs.”).

³⁵ Available statewide data does not distinguish between full-time and part-time employees, so that breakdown is not reflected here. See North Carolina Public School Statistical Profile – Table 16, <http://apps.schools.nc.gov/ords/f?p=145:21:::NO::> (last visited Mar. 18, 2024). Data is current as of the 2023-2024 school year. In any event, the representative data suggests that utilization of PPL by part-time employees will be only a very small fraction of the whole.

A similar calculation was conducted for birthing and non-birthing parents.³⁶ To identify the total number of birthing and non-birthing employees projected to take PPL, the number of female and male employees in the representative districts was divided by their respective statewide totals. The representative districts had 30,045 female employees compared with 131,202 **female** employees statewide, for a quotient of .0229. The representative districts had 7,635 **male** employees compared with 36,073 male employees statewide, for a quotient of .0217. The total number of birthing parents projected to be awarded PPL in the representative districts (Table 4) was then divided by the female quotient (.0229), resulting in an estimate of approximately **2,391** birthing parents and **498** non-birthing parents being awarded PPL during the 2023-2024 school year.

Table 5 – Estimated PPL Usage in All LSAUs (July 1, 2023 – July 1, 2024)

| Total Employees | Number of Employees Awarded PPL (Projected)³⁷ | Birthing Employees Awarded PPL (Projected) | Number of Non-Birthing Employees Awarded PPL (Projected) |
|------------------------|---|---|---|
| 174,981 | 3,048.84 | 2,390.83 | 497.70 |

Unlike LSAUs, which are required to provide PPL, charter schools must opt into the benefit.³⁸ During the 2023-2024 school year, **105** of North Carolina’s 211 active charter schools, or approximately 50%, have opted to provide PPL. According to data from the DPI Division of Financial and Business Services, as of February 29, 2024, only **19** of those schools have requested reimbursement for substitute teachers hired to cover an employee taking PPL, and DPI has disbursed **\$92,663** in reimbursements.³⁹

Cost Estimates for PPL

As a practical matter, estimating the “cost” of PPL on a statewide basis is an extraordinarily difficult task. The public school system differs from the State employment system in several relevant respects:

1. Instead of one employer (the State) with one centralized human resources office (OSHR), the public school system consists of hundreds of employers (115 local school administrative units and over 200 charter schools).⁴⁰
2. Most public-school employees are classroom teachers. Unlike many state agencies, where one employee’s absence for PPL can often be managed by temporarily distributing that employee’s

³⁶ Due to the unavailability of statewide data on PPL usage rates between birthing and non-birthing employees, statewide data on female and male employees were utilized as respective proxies. Of the 72 non-birthing employees awarded PPL in the representative PSUs, only 4 (5%) were female.

³⁷ The difference between the total number of employees estimated to use PPL and the sum of the total number of birthing and on-birthing employees estimated to use PPL is 160.31, a variation of approximately 5% of the estimated total number of employees using PPL. This variation likely results from the use of proxy data as described in Footnote 36 and likely reflects an undercount of non-birthing parents estimated to use PPL.

³⁸ G.S. 115C-218.90(a)(6).

³⁹ For administrative purposes, charter schools must file requests for reimbursement from DPI to cover the costs of substitute teachers under the SBE PPL rule. LSAUs simply draw upon the existing DPI substitute teacher fund, which has been supplemented by the money appropriated by the General Assembly specifically for PPL.

⁴⁰ Adding to the complexity of this structure, many charter schools contract with an education management organization (“EMO”) that manages the business operations of the school, including hiring and staffing. These EMOs can be for-profit organizations that often manage multiple schools and operate across state lines. See Natalie Camarena Lopez & Miguel Zarate, “How Are Charter Schools Managed?” NATIONAL ALLIANCE FOR PUBLIC CHARTER SCHOOLS, <https://data.publiccharters.org/digest/charter-school-data-digest/who-manages-charter-schools/> (last accessed Mar. 26, 2024).

duties among others in the agency, a teacher's absence, with rare exception, requires the appointment of a substitute teacher.

3. Public school employees are paid from a variety of funding sources, including local, state, and federal funds. Frequently, an employee's total compensation comes from a mixture of sources, such as teachers who receive a salary paid by the State plus a local supplement paid with local funds appropriated by the local city council or county commission.

As a result of these differences, even if the total number of employees taking PPL is held constant, the projected cost of PPL may differ from one public school unit to another depending on funding sources and the independent judgment exercised by each PSU on how best to address the temporary staffing shortage.⁴¹

One potential method for calculating the cost of PPL is to calculate the total salary and benefits employees received during their time on parental leave. Before the implementation of PPL, employees would have had to use other accrued leave or take unpaid leave during this time. Under G.S. 126-8.6, the new PPL benefit is in addition to vacation leave, sick leave, and other leave authorized by State or federal law,⁴² so the cost could be compared to a scenario in which the employee would have taken unpaid leave.⁴³

Table 6 shows the average and median employee compensation (including salary and benefits) reported by each of the representative LSAUs. It then estimates the average and median cost of an employee who takes PPL in lieu of unpaid leave by multiplying the average and median daily salary of an employee in each LSAU times the total working days of leave for 4 weeks (20 days) and 8 weeks (40) days.⁴⁴ For purposes of this analysis, 195 working days in a calendar year are assumed.⁴⁵ Accordingly, Table 6 calculates costs by dividing the average and median compensation for each school district by 195 and multiplying that by the number of days of leave.

⁴¹ As an example, the representative school districts were asked to provide data on their total expenditures on compensation for temporary employees or overtime pay (excluding substitute teachers paid with state funds). Only two districts reported such data: Buncombe County (\$60,237) and Onslow County (\$424,586.83). The remaining counties either reported no expenditures or reported that they were unable to calculate this number.

⁴² See G.S. 126-8.6(d)(1).

⁴³ In addition to salary, employees receive compensation in other forms (e.g., accrued leave and fringe benefits) based on the days when they are in pay status. By law, PPL may not be used for calculating an employee's retirement benefits and cannot be cashed out upon exit. See G.S. 126-8.6(d)(2)–(3). However, if an employee uses PPL and, as a result, avoids being on leave without pay, the employee will remain in pay status for additional days and receive compensation in the form of salary plus benefits for those days.

⁴⁴ Under the SBE rule, state holidays—and other days that a public-school employee would not otherwise be required to work, such as optional teacher workdays—that fall during a time when the employee is on leave are not counted against the employee's leave allotment. Thus, if an employee entitled to 4 weeks of leave started that leave period on August 28, 2023, the employee would not be required to return to work until September 26, 2023, given the intervening Labor Day holiday.

⁴⁵ Most public-school employees are teachers employed on 10-month annual contracts. By state law, these teachers may not be required to work for more than 195 days in a 10-month period. G.S. 115C-84.2(b)(1).

**Table 6 – Compensation Cost Estimates of PPL for Employees in Representative Districts
(Compared to Cost of Unpaid Leave for Employees During Same Period)**

| PSU Name | Average Compensation | Median Compensation | Average Cost of PPL (8 Weeks) (40 Days) | Average Cost of PPL (4 Weeks) (20 Days) | Median Cost of PPL (8 Weeks) (40 Days) | Median Cost of PPL (4 Weeks) (20 Days) |
|----------------------------------|-----------------------------|----------------------------|--|--|---|---|
| Buncombe County Schools | \$73,698.00 | \$73,843.00 | \$15,117.54 | \$7,558.77 | \$15,147.28 | \$7,573.64 |
| Cumberland County Schools | \$70,496.00 | \$68,722.00 | \$14,460.72 | \$7,230.36 | \$14,096.82 | \$7,048.41 |
| Davie County Schools | \$64,898.75 | \$69,046.20 | \$13,312.56 | \$6,656.28 | \$14,163.32 | \$7,081.66 |
| Northampton County Schools | \$40,833.75 | \$39,000.00 | \$8,376.15 | \$4,188.08 | \$8,000.00 | \$4,000.00 |
| Onslow County Schools | \$67,121.24 | \$64,472.43 | \$13,768.15 | \$6,884.23 | \$13,225.11 | \$6,612.56 |
| Randolph County Schools | \$57,605.03 | \$71,809.08 | \$11,816.42 | \$5,908.21 | \$14,730.07 | \$7,365.03 |
| Wake County Public School System | \$74,546.48 | 74,882.09 | \$15,291.59 | \$7,645.79 | \$15,360.43 | \$7,680.21 |

Table 7 estimates the total compensation cost for the representative districts. It multiplies the average and median costs for individual employees from Table 7 times the total number of employees projected to take PPL during the 2023-2024 school year. The individual compensation cost for 8 weeks of leave is multiplied by the number of birthing employees taking leave, while the individual compensation cost for 4 weeks of leave is multiplied by the number of non-birthing employees taking leave.

**Table 7 – Total Compensation Cost Estimates of PPL in Representative Districts
(Compared to Cost of Unpaid Leave During Same Period)
(July 1, 2023 – July 1, 2024)**

| PSU Name | Number of Birthing Employees Awarded PPL (Projected) | Number of Non-Birthing Employees Awarded PPL (Projected) | Average Total Cost of PPL (8 Weeks) (40 Days) | Average Total Cost of PPL (4 Weeks) (20 Days) | Median Cost of PPL (8 Weeks) (40 Days) | Median Cost of PPL (4 Weeks) (20 Days) |
|----------------------------|---|---|--|--|---|---|
| Buncombe County Schools | 34.5 | 13.5 | \$521,555.13 | \$522,581.16 | \$102,043.40 | \$102,244.14 |
| Cumberland County Schools | 88.5 | 3 | \$1,279,773.72 | \$1,247,568.57 | \$21,691.08 | \$21,145.23 |
| Davie County Schools | 10.5 | 3 | \$139,781.88 | \$148,714.86 | \$19,968.84 | \$21,244.98 |
| Northampton County Schools | 6 | 0 | \$50,256.90 | \$48,000.00 | \$0.00 | \$0.00 |
| Onslow County Schools | 79.5 | 13.5 | \$1,094,567.93 | \$1,051,396.25 | \$92,937.11 | \$89,269.56 |

| | | | | | | |
|----------------------------------|------|----|----------------|----------------|--------------|--------------|
| Randolph County Schools | 43.5 | 15 | \$514,014.27 | \$640,758.05 | \$88,623.15 | \$110,475.45 |
| Wake County Public School System | 285 | 60 | \$4,358,103.15 | \$4,377,722.55 | \$458,747.40 | \$460,812.60 |

In reality, these numbers likely overstate the total compensation costs for PPL because they are based on average and median compensation for all employees across a district. Most employees who will be using PPL, especially birthing employees, will be younger and earlier in their careers, and thus paid at a lower rate. Recall from Footnote 24 that the average salary for all teachers in North Carolina in the 2022-2023 school year was \$57,805, while the average salary for a starting teacher was just \$37,127, a more than \$20,000 difference. Meanwhile, the average age of employees in the representative districts ranged from 45 to 51, while the median age ranged from 45 to 53.

More importantly, however, is that the compensation costs discussed above are costs the districts would already have incurred had the employee not taken unpaid leave. Thus, the only cost added by PPL are the additional costs incurred because of that employee’s absence. As previously explained, it is not feasible to project these costs for public school employees other than classroom teachers because of the nature and variety of positions and the autonomy individual PSUs exercise in addressing temporary staffing shortages. One district may decide to hire a temporary employee while others may choose to spread out the absent employee’s duties among remaining staff, which may or may not involve paying overtime.

Nevertheless, one area in which cost projection is more predictable is the hiring of substitute teachers. With rare exception, when a classroom teacher takes PPL, the PSU will need to hire a substitute teacher to cover the teacher’s classroom for the four to eight weeks that the teacher is absent. Compensation for substitute teachers in the representative districts ranges from \$112.50 to \$120 per day for individuals without a professional educator license (an average of \$117 per day) and \$116 to \$145 for those with a license (an average of \$137 per day). Table 8 lists the daily rates for substitute teachers and the total cost for employing a substitute teacher during 4- and 8-week periods of PPL.

Table 8 – Individual Cost of Substitute Teachers in Representative Districts ⁴⁶

| PSU Name | Daily Rate for Licensed Substitute Teacher | Daily Rate for Un-Licensed Substitute Teacher | Cost of Licensed Substitute Teacher (8 Weeks) | Cost of Un-Licensed Substitute Teacher (4 Weeks) | Cost of Un-Licensed Substitute Teacher (8 Weeks) | Cost of Un-Licensed Substitute Teacher (4 Weeks) |
|----------------------------|--|---|---|--|--|--|
| Buncombe County Schools | \$145 | \$120 | \$5,800 | \$2,900 | \$4,800 | \$2,400 |
| Cumberland County Schools | \$145 | \$113 | \$5,800 | \$2,900 | \$4,520 | \$2,260 |
| Davie County Schools | \$116 | \$112.50 | \$4,640 | \$2,320 | \$4,500 | \$2,250 |
| Northampton County Schools | \$138 | \$113 | \$5,520 | \$2,760 | \$4,520 | \$2,260 |

⁴⁶ Some PSUs offer higher daily rates for “long-term” substitute teachers, which are substitute teachers who provide coverage for the same classroom during an extended period of absence by the regular classroom teacher. Although many PSUs will rely on long-term substitute teachers for teachers who take PPL, for the sake of simplicity, this fiscal note relies on the standard daily pay rates.

| | | | | | | |
|----------------------------------|-------|-------|---------|---------|---------|---------|
| Onslow County Schools | \$145 | \$120 | \$5,800 | \$2,900 | \$4,800 | \$2,400 |
| Randolph County Schools | \$134 | \$117 | \$5,360 | \$2,680 | \$4,680 | \$2,340 |
| Wake County Public School System | \$135 | \$120 | \$5,400 | 2,700 | \$4,800 | \$2,400 |

Table 9 projects total cost estimates for substitute teachers in the representative districts for the 2023-2024 school year by multiplying the projected number of birthing and non-birthing employees taking paid parental leave by the cost of employing a licensed or unlicensed substitute teacher for the full period of that employee's leave.

Table 9 – Total Projected Cost of Substitute Teachers in Representative Districts (July 1, 2023 – July 1, 2024)

| PSU Name | Number of Birthing Employees Awarded PPL (Projected) | Number of Non-Birthing Employees Awarded PPL (Projected) | Total Cost of Licensed Substitute Teachers (8 Weeks) | Total Cost of Licensed Substitute Teachers (4 Weeks) | Total Cost of Un-Licensed Substitute Teachers (8 Weeks) | Total Cost of Un-Licensed Substitute Teachers (4 Weeks) |
|----------------------------------|--|--|--|--|---|---|
| Buncombe County Schools | 34.5 | 13.5 | \$200,100 | \$39,150 | \$165,600 | \$32,400 |
| Cumberland County Schools | 88.5 | 3 | \$513,300 | \$8,700 | \$400,020 | \$6,780 |
| Davie County Schools | 10.5 | 3 | \$48,720 | \$6,960 | \$47,250 | \$6,750 |
| Northampton County Schools | 6 | 0 | \$57,960 | \$0 | \$47,460 | \$0 |
| Onslow County Schools | 79.5 | 13.5 | \$461,100 | \$39,150 | \$381,600 | \$32,400 |
| Randolph County Schools | 43.5 | 15 | \$233,160 | \$40,200 | \$203,580 | \$35,100 |
| Wake County Public School System | 285 | 60 | \$1,539,000 | \$162,000 | \$1,368,000 | \$144,000 |

The costs reflected in Tables 8 and 9 provide a more realistic forecast of the cost of PPL because it reflects the true *added* cost of PPL—that is, the cost a district incurs because of the employee's absence while that employee continues to be paid. Cost estimates for substitute teachers are also more accurate because the cost to a district of hiring a substitute teacher does not change based on the compensation level of the full-time teacher for whom that substitute is covering and varies only marginally based on whether the substitute teacher holds a professional educator license.

It is important to note that the numbers above assume extreme scenarios in which all substitute teachers hired for all employees taking PPL in the 2023-2024 school year are either licensed or unlicensed. In practice, LSAUs will employ some combination, thus creating a range of potential costs. For example, under this analysis, the projected cost of hiring substitute teachers for birthing employees in Buncombe

County will be between \$165,600 (all unlicensed substitutes) and \$200,100 (all licensed substitutes). Similarly, the projected cost of hiring substitute teachers for non-birthing employees in Buncombe County will be between \$32,400 (all unlicensed substitutes) and \$39,150 (all licensed substitutes)

Regardless, the estimates above are likely overestimates of the total cost because the PPL usage rates used for the calculations include not only classroom teachers but other employees who either will not require a “substitute” during the period of leave or whose responsibilities will be covered by an employee paid at a different rate (such as a temporary custodian paid by the hour). For reasons already discussed, there are practical challenges to estimating these costs based on the substantial discretion that individual PSUs exercise with employment and staffing decisions.

Table 10 estimates the total cost of substitute teachers in LSAUs arising from PPL for the 2023-2024 school year. These estimates are based on the projected PPL usage rates from Table 5 and the average daily rates for licensed (\$137/day) and unlicensed (\$117/day) substitute teachers in the representative districts.

**Table 10 – Total Projected Cost of Substitute Teachers in All LSAUs
(July 1, 2023 – July 1, 2024)**

| | Total Statewide |
|---|------------------------|
| All Employees | 174,981 |
| Number of Birthing Employees Awarded PPL (Projected) | 2,390.83 |
| Number of Non-Birthing Employees Awarded PPL (Projected) | 497.70 |
| Total Cost of Licensed Substitute Teachers (8 Weeks) | \$13,101,748 |
| Total Cost of Licensed Substitute Teachers (4 Weeks) | \$1,363,698 |
| Total Cost of Un-Licensed Substitute Teachers (8 Weeks) | \$11,189,084 |
| Total Cost of Un-Licensed Substitute Teachers (4 Weeks) | \$1,164,618 |
| Total Cost for All Awarded PPL (Licensed) | \$14,465,446 |
| Total Cost for All Awarded PPL (Unlicensed) | \$12,353,702 |

As with Table 9 the numbers in Table 10 assume extreme scenarios in which all substitute teachers hired for all employees taking PPL in the 2023-2024 school year are either licensed or unlicensed. In practice, LSAUs will employ some combination, thus creating a range of potential costs. Therefore, the projected cost of hiring substitute teachers for birthing employees statewide will be between **\$11,189,084** (all unlicensed substitutes) and **\$13,101,748** (all licensed substitutes). Similarly, the projected cost of hiring substitute teachers for non-birthing employees statewide will be between **\$1,164,618** (all unlicensed substitutes) and **\$1,363,698** (all licensed substitutes). As with the representative districts, the statewide projections are likely an overestimate because they assume all employees who take leave will require a substitute teacher in their absence.

Notwithstanding the other limitations of this fiscal note, the DPI Division of Financial and Business Services has compiled limited data from PSUs that have reported using substitute teacher funds for employees taking PPL. Table 11 reflects data as of February 29, 2024. To develop an estimate for cost of substitute teachers associated of PPL in a standard 12-month fiscal year, Table 11 also divides the total

expenditures by eight (the number of months for which data is available) and multiplies that number by 12.⁴⁷

Table 11 – Utilization of Substitute Teacher Fund for PPL

| PSU Type | Number of Units Reporting Expenditures (2/29/24) | Total Expenditures (7/1/23 – 2/29/24) | Projected Expenditures (7/1/23 – 7/1/24) |
|-----------------------------------|---|--|---|
| Local School Administrative Units | 69 | \$2,018,783 | \$3,028,174.50 |
| Charter Schools | 19 | \$92,663 | \$138,994.50 |
| Total | 88 | \$2,111,446 | \$3,167,169 |

Although the differences in projected cost between Tables 10 and 11 seem large at first blush, there are several important things to keep in mind. First, the usage and expenditure rates reported in Table 11 almost certainly reflect an undercount of actual PPL utilization as of February 29, 2024. PSUs do not always report leave utilization at the time of use and will sometimes recode leave usage after the fact.⁴⁸ It is highly unlikely that only 69 out of 115 LSAUs (60%) and 19 out of 50 charter schools that opted to provide PPL (38%) have had at least one employee use PPL, so the SBE anticipates that the reported expenditures will accelerate toward the end of the fiscal year. In addition, as previously noted, the projections in Table 10 assume all employees who take PPL are replaced with a substitute teacher during their absence, which will not be the case.

As previously stated, the General Assembly has provided a supplemental appropriation of \$10 million in recurring funds each year for the 2023-2024 and 2024-2025 fiscal years expressly for the cost of hiring substitute teachers.⁴⁹ These funds are available to all LSAUs and to any charter school that elects to participate in PPL.⁵⁰ Based on the analysis above, the SBE anticipates that the supplemental appropriation will be sufficient to cover most, if not all, of the cost to PSUs to administer PPL in the 2023-2025 biennium, at least for classroom teachers and others requiring a substitute teacher. To the extent that the appropriation is insufficient or the General Assembly fails to continue this supplemental appropriation in future biennial budgets, PSUs will need to rely on other funding sources. These sources include both existing State fund for substitute teachers and other unlicensed (which has been augmented by the supplemental appropriations) personnel and local funds.

Areas of SBE Discretion

Except where otherwise noted, the analysis in this fiscal note is limited to differences from the regulatory baseline. As a result, the analysis will discuss subject areas where the statute gave the SHRC (and by extension the SBE) discretion and fiscal and regulatory impact that can be attributed to the proposed rule. The alternatives presented here are similar to those contemplated by the SHRC in its fiscal note and are for analytical purposes only, given that the SBE is ultimately required to adopt a rule that substantially complies with the rules adopted by the SHRC.

⁴⁷ This calculation assumes a static total employment from March 1 to July 1, 2024.

⁴⁸ For example, the SBE temporary rule on parental leave did not take effect until October 27, 2023, even though it applied to qualifying events occurring on or after July 1, 2023. An otherwise eligible public-school employee who experienced a qualifying event between July 1, 2023, and October 27, 2023, and utilized other forms of leave to care for the child (e.g., sick leave or annual leave) would be eligible to have that leave retroactively recoded as paid parental leave.

⁴⁹ S.L. 2023-14, § 5.1.(e); G.S. 115C-336.1(b).

⁵⁰ G.S. 115C-218.90(a)(6)

(1) Minimum Service Period Prior to Eligibility for PPL

Cost in Addition to Regulatory Baseline: Zero.

Savings Compared to Alternatives: Unable to Calculate.

G.S. 126-8.6(c1) requires the SHRC, and by extension the SBE, to establish a minimum service period before an employee becomes eligible for PPL. Paragraph (b) of the proposed SBE rule satisfies this requirement by setting minimum of 12 months of qualifying State service prior to being eligible for PPL.⁵¹ The 12-month service requirement is consistent with the federal Family and Medical Leave Act (“FMLA”), which also treats the birth, adoption, or foster care placement of a child as a qualifying event.⁵²

Although theoretically possible, there are several practical challenges to predicting with any level of precision how changing the minimum service period for public school employees would affect the total cost of the PPL benefit statewide. The first, as has been discussed extensively in this analysis, is the lack of available statewide data. The SBE currently lacks reliable data on the number of PSU employees who have less than 12 months of continuous service with an employer providing PPL under G.S. 126-8.6. Data from representative districts is of little predictive value because the percentage of employees in those districts who had been employed for less than 12 months ranged widely from 9.1% to 26.0% and did not specify where those employees had worked prior to their current position.

This raises a second, and more significant, barrier to cost prediction: the aggregation requirement in G.S. 126-8.6(c1). The law and the SBE rule allow an employee to aggregate periods of service with multiple employers offering PPL to satisfy the 12-month minimum service period. As a result, a PSU employee may qualify for PPL even if they have worked for that specific PSU for fewer than 12 months. Moreover, transition between employers covered by G.S. 126-8.6 is more common among public school employees than among State agencies,⁵³ the UNC System, or the community college system. Public school employees frequently transition between LSAUs, especially neighboring LSAUs (e.g., Durham Public Schools and Wake County Public Schools), and between LSAUs and charter schools within the same district. This reality was, in no small part, the reason the aggregation provision was later added to G.S. 126-8.6 as part of the 2023 Appropriations Bill. *See* S.L. 2023-134, Section 7.83.(a).

For all these reasons, it is extraordinarily difficult to predict with any level of precision how changing the minimum service period for public school employees would affect the total cost of the PPL benefit statewide.

(2) Categorization of Leave Between Birthing Parents and Non-Birthing Parents

Cost in Addition to Regulatory Baseline: Zero.

Savings Compared to Alternatives: Nonquantifiable.

⁵¹ As required by G.S. 126-8.6(c1), the 12-month requirement may be satisfied by aggregating service to any employer providing PPL under G.S. 126-8.6. The SBE rule limits this provision by limiting any transition period between positions, during which the employee is not in pay status, to 31 days. 16 NCAC 06C .0408(b)(5).

⁵² *See* 29 U.S.C. §§ 2611(2)(A), 2612(a)(1).

⁵³ Even if an employee moves from one State agency to another (e.g., from DPI to DHHS), his or her employer remains the same (the State) for purposes of the PPL benefit.

The enabling statute requires that the PPL rule must provide for public school employees to receive “[u]p to eight weeks of paid leave after giving birth to a child,” and “[u]p to four weeks of paid leave after any other qualifying event.”⁵⁴ Therefore, the regulatory baseline includes eight weeks of PPL for birthing parents and four weeks of PPL for non-birthing parents.

The SHRC (and by extension the SBE) has discretion under the statute, however, to categorize the weeks of leave. Subparagraph (c)(1) of the proposed SBE rule provides that birthing parent receive “[f]our weeks for physical and mental recuperation” and “[f]our additional weeks for bonding with the child.” Subparagraph (c)(2) provides that non-birthing parents receive “four weeks for bonding with the child.”

This descriptive choice results in no cost to the State or to PSU employers. It does not change how much leave an employee receives, which is determined by statute, and is consistent with the proposed SHRC rule.

The descriptive choice, does however, benefit employers because it ensures the PPL rule is consistent with the law. As discussed above, guidance from the Equal Employment Opportunity Commission and appellate case law endorse programs with one period of leave that is available equally to all parents and with an additional period of leave available birth parents for physical recovery from childbirth.⁵⁵ Public school units would face significant risk of legal liability if they were to provide different amounts of bonding leave for mothers and fathers; to avoid litigation risk and potential litigation expenses, the amounts for men and women should match. The only way to do this, within the constraints of the law, is to have four weeks of PPL available to birthing and non-birthing parents for the purpose of bonding with the child and four weeks of recuperative available only to the birth parent. The savings arising from avoiding litigation costs cannot be accurately quantified.

(3) Leave Administration for Adoption and Foster Care Placement

Cost in Addition to Regulatory Baseline: Zero.

Savings Compare to Alternatives: No more than \$1,370 per year statewide.

G.S. 126-8.6(b)(2) requires that adoptive or foster parents receive “[u]p to four weeks of paid leave,” making this part of the regulatory baseline. However, the proposed rule does contain two discretionary points related to adoption or foster placements. Paragraph (d) provides that when an otherwise eligible employee who gives birth places the child with another person through adoption, foster care, or other legal placement, the birthing parent receives four weeks of PPL for mental and physical recuperation but no time for bonding with the child. Likewise, an otherwise eligible employee who does not give birth would not qualify for PPL at all.

This position is based upon the policy rationale for PPL, rather than any financial benefits. The PPL benefit as structured in this rule is designed to provide the birthing parent with time for physical and mental recuperation and both parents time for bonding time with the child; accordingly, it is reasonable to provide leave for recuperation to a birthing parent who is recovering from childbirth, but not provide leave for bonding when the parent has given up legal custody of the child. These discretionary points do not result in any additional cost to the State or to PSUs, since the alternative would be to provide the full breadth of the PPL benefit in these circumstances. On the other hand, any realized savings appear to be negligible, amounting to no more than \$1,370 per year statewide.

⁵⁴ G.S. 126-8.6(b)(1), (2).

⁵⁵ See Footnote 8 and supporting text.

In North Carolina, 0.24% of children enter foster care each year, and only 6.6% of children in foster care are under one year old (the time period when PPL might be available to the biological parents of the child who is being placed in foster care).⁵⁶ Multiplying 0.24% by 6.6%, it appears that no more than 0.016% of children enter foster care in the first year after birth. Based on the statewide projected use of PPL by public school employees in Table 5, 3,048.84 will utilize PPL in the 2023-2024 fiscal year. At a rate of 0.016%, it would be expected that 0.49 employees per year (or approximately one employee every two years) would place a child into foster care after childbirth. The average cost of providing four weeks of PPL for bonding, measured by the cost of hiring a substitute teacher for the affected period, is between \$2,340 (unlicensed) and \$2,740 (licensed) per employee. This suggests that the annual savings from eliminating four weeks of PPL for bonding for otherwise eligible employees who place the child in foster care would be, on average, between **\$1,170** and **\$1,370** statewide.

(4) PPL Following Miscarriage or Stillbirth

Cost of Proposed Rule (4 Weeks for Birthing Parent; None for Non-Birthing Parent): \$275,418 to \$322,498 per year.

Cost of Alternative #1 (2 Weeks for Birthing Parent; None for Non-Birthing Parent): \$137,709 to \$161,249 per year.

Cost of Alternative #2 (8 Weeks for Birthing Parent; 4 Weeks for Non-Birthing Parent): \$642,447 to \$752,267 per year.

G.S. 126-8.6(c1) requires the SHRC, and by extension the SBE, to “adopt rules and policies providing for . . . how much leave is to be provided in the event of a miscarriage or the death of a child during birth;” however, the law does not specify how much leave must be provided under these circumstances. Paragraph (f) of the proposed rule provides that, if the fetus dies after the conclusion of the 12th week of pregnancy but prior to a completed birth, the birth parent shall be entitled to four weeks of PPL for mental and physical recuperation, but neither parent shall be entitled to four weeks of PPL for bonding purposes.

This provision allows the birthing parent time to mentally and physically recover from the effects of the miscarriage or stillbirth. Such events can trigger long-lasting physical and mental effects.⁵⁷ For stillbirths that occur later in pregnancy, the physical birth process may be identical to the delivery of a healthy baby. It is reasonable to give the birthing parent an opportunity to recover.

To estimate the cost of PPL for miscarriage or stillbirth, the SBE has extrapolated costs based on projected PPL usage rates among public school employees for the 2023-2024 fiscal year and data from the U.S. Centers for Disease Control (“CDC”). Due to limitations on available pregnancy loss data, this fiscal note analyzes two groups: pregnancy loss that occurs at Week 20 or later, and pregnancy loss that occurs at Weeks 13-19. The cumulative impact of each group yields the total impact of the proposed rule.

Pregnancy loss in Week 20 or later. In 2020, the CDC reported that the fetal mortality rate, defined as fetal deaths at 20 weeks of gestation or more per 1,000 live births and fetal deaths, was 5.74 nationally, or

⁵⁶ U.S. Department of Health & Human Services, Children’s Bureau Child Welfare Outcomes, North Carolina, <https://cwoutcomes.acf.hhs.gov/cwodatase/pdf/north%20carolina.html> (last accessed Apr. 10, 2024).

⁵⁷ For a general discussion of the physical and emotional effects of miscarriage, see WebMD, “What Is a Miscarriage?” <https://www.webmd.com/baby/understanding-miscarriage-basics>.

a rate of .0574%.⁵⁸ The fetal mortality rate in North Carolina was slightly higher at 5.9 for the year 2021 and 6.4 for the years 2017-2021, or a rate of .059% and .064%, respectively.⁵⁹ To estimate the impact of extending PPL to miscarriages and stillbirths, the number of public school employees projected to take PPL for the 2023-2024 fiscal year was multiplied by the reported fetal death rate for North Carolina (.064%). That number was then multiplied by the average cost of PPL. The average cost of providing PPL, measured by the cost of hiring a substitute teacher for the affected period, is between \$2,340 (unlicensed) and \$2,740 (licensed) per employee for non-birthing parents, and between \$4,680 (unlicensed) and \$5,480 (licensed) for birthing parents. The results are reflected in Table 12 below.

**Table 12 – Projected Cost of PPL for Miscarriages and Stillbirths After 20 Weeks
(July 1, 2023 – July 1, 2024)**

| | Proposed Rule (4 Weeks of PPL for Birth Parent) | Alternative 1.0 (2 Weeks of PPL for Birth Parent) | Alternative 2.0 (8 Weeks of PPL for Birth Parent; 4 Weeks of PPL for Non-Birth Parent) |
|--|--|--|---|
| Number of Birthing Parent Employees (Projected) | 2,390.83 | 2,390.83 | 2,390.83 |
| Number of Non-Birthing Parent Employees (Projected) | 497.70 | 497.70 | 497.70 |
| Total | 2,888.53 | 2,888.53 | 2,888.53 |
| Rate of Pregnancy Loss – 20 Weeks or Later | 0.64% | 0.64% | 0.64% |
| Number of Miscarriages Among All Parent Employees (Projected) | 18.49 | 18.49 | 18.49 |
| Average Daily Rate for Licensed Substitutes | \$137 | \$137 | \$137 |
| Average Daily Rate for Unlicensed Substitutes | \$117 | \$117 | \$117 |
| Total Cost of PPL for Birthing Employees Experiencing Miscarriage/Stillbirth (Licensed Substitute) | \$50,662.60 | \$25,331.30 | \$101,325.20 |
| Total Cost of PPL for Birthing Employees Experiencing Miscarriage/Stillbirth (Unlicensed Substitute) | \$43,266.60 | \$21,633.30 | \$86,533.20 |
| Total Cost of PPL for Non-Birthing Employees Experiencing Miscarriage/Stillbirth (Licensed Substitute) | \$0.00 | \$0.00 | \$50,662.60 |
| Total Cost of PPL for Non-Birthing Employees Experiencing | \$0.00 | \$0.00 | \$43,266.60 |

⁵⁸ U.S. Centers for Disease Control and Prevention, National Center for Health Statistics, “Fetal Mortality: United States, 2020,” *National Vital Statistics Reports* vol. 71, no. 4 (Aug. 4, 2022), <https://www.cdc.gov/nchs/data/nvsr/nvsr71/nvsr71-04.pdf> (last accessed Apr. 10, 2024).

⁵⁹ N.C. Department of Health & Human Services, *North Carolina Vital Statistics*, Vol. 1, “Selected Vital Statistics for 2021 and 2017-2021,” <https://schs.dph.ncdhhs.gov/data/vital/volume1/2021/2021-VS-Vol1-NC-StateTables.pdf> (last accessed Apr. 10, 2024). Definitions of terms used in this DHHS vital statistics table can be found in the broader vital statistics report. The broader 2020 report, including definitions, can be found at <https://schs.dph.ncdhhs.gov/data/vital/volume1/2020/Volume1-2020.pdf> (last accessed Apr. 10, 2024).

| | | | |
|--|--------------------|--------------------|---------------------|
| Miscarriage/Stillbirth (Unlicensed Substitute) | | | |
| Total (Licensed Substitute) | \$50,662.60 | \$25,331.30 | \$151,987.80 |
| Total (Unlicensed Substitute) | \$43,266.60 | \$21,633.30 | \$129,799.80 |

As seen above, the anticipated cost of extending four weeks of PPL to birthing parents who experience a miscarriage after Week 20 ranges from **\$43,266.60** to **\$50,662.60**. The anticipated cost of the first alternative, extending only two weeks of PPL to birthing parents who experience a miscarriage after Week 20, ranges from **\$21,633.30** to **\$25,331.30**. Finally, the anticipated cost of the second alternative, extending full PPL benefits to both parents who experience a miscarriage after Week 20, ranges from **\$129,799.80** to **\$151,987.80**. These calculations are only for fetal deaths that occur at or after the 20th week of pregnancy because those are the only fetal deaths are tracked in the North Carolina Vital Statistics. These amounts are in addition to the cost of the regulatory baseline.

The cost variations between the proposed rule and the two alternatives are relatively small when compared to the total cost for the paid parental leave program (projected at \$12.4 million to \$14.5 million annually based on Table 10). The SHRC, and by extension the SBE, has concluded the use of PPL under these circumstances should be consistent with other provisions in similar circumstances. As with the provision on adoption and foster care placements discussed above, bonding with the child does not occur when the child is not present. Although the SBE rule will not require employers to provide employees who experience a miscarriage or stillbirth with leave for the purpose of bereavement, the SBE encourages public school employers to be flexible and allow employees under these circumstances to utilize other forms of leave, such as annual leave.

Pregnancy loss in Week 19 or earlier. It is much more difficult to estimate the cost of extending PPL to those employees experiencing pregnancy loss before the 20th week of gestation. Pregnancy losses at this stage are not reportable to the state or national Centers for Health Statistics.⁶⁰ As a result, there is no equivalent annual fetal mortality rate that can be used to project miscarriages prior to 20 weeks.

In lieu of an equivalent fetal mortality rate from an official source, this analysis applies the findings of a U.S. study of miscarriage risk from 2013.⁶¹ This study identified a week-specific probability of pregnancy loss among participants in a government program. The 2013 study is dated and its estimates of pregnancy loss by week are approximate, but to date it appears to be the best available source on a topic where official government statistics are not available and where research is sparse. In the 2013 study, the risk of pregnancy loss was approximately 2.75% in Weeks 8 through 9 of pregnancy, approximately 2.0% in Weeks 10 through 12, approximately 1.5% in Week 13, approximately 0.75% in Week 14, approximately 0.5% in the Weeks 15 and 16, and approximately 0.3% for the Weeks 17 through 19. The analysis makes the conservative assumption that the risk of pregnancy loss would be cumulative for each week. Table 13 below estimates of the total number of public school employees who would be eligible for PPL because of a miscarriage before Week 20. Table 13 reports the results.

⁶⁰ N.C. Department of Health and Human Services, Division of Public Health, *North Carolina Vital Statistics, Volume 1* (Oct. 2022), page labeled as “1-22”, <https://schs.dph.ncdhs.gov/data/vital/volume1/2020/Volume1-2020.pdf>.

⁶¹ Sudeshna Mukherjee et al., *Risk of Miscarriage Among Black Women and White Women in a US Prospective Cohort Study*, 177 AMERICAN JOURNAL OF EPIDEMIOLOGY 1276 (Apr. 4, 2013).

**Table 13 – Projected Statewide Pregnancy Loss Before Week 20
(July 1, 2023 – July 1, 2024)**

| | Pregnancy Loss Rate | Number of Parent Employee (Projected) | Estimated Miscarriage Rate Among Parent Employees |
|--|----------------------------|--|--|
| Week 8 | 2.75% | 2,888.53 | 79.43 |
| Week 9 | 2.75% | 2,888.53 | 79.43 |
| Week 10 | 2.00% | 2,888.53 | 57.77 |
| Week 11 | 2.00% | 2,888.53 | 57.77 |
| Week 12 | 2.00% | 2,888.53 | 57.77 |
| Week 13 | 1.50% | 2,888.53 | 43.33 |
| Week 14 | 0.75% | 2,888.53 | 21.66 |
| Week 15 | 0.50% | 2,888.53 | 14.44 |
| Week 16 | 0.50% | 2,888.53 | 14.44 |
| Week 17 | 0.30% | 2,888.53 | 8.66 |
| Week 18 | 0.30% | 2,888.53 | 8.66 |
| Week 19 | 0.30% | 2,888.53 | 8.66 |
| Total for Weeks 8 to 19 | | | 452.05 |
| Total for Weeks 13 to 19 | | | 119.87 |
| <i>To estimate the total number of birthing parents who will experience a miscarriage, the totals above were multiplied by the proportion of all employees projected to take PPL in the 2023-2024 fiscal year who are birthing parents ($2,390.83 \div 2,888.53 = 0.8277$ or 82.77%).</i> | | | |
| Birthing Parents Experiencing Miscarriage in Weeks 8 to 19 | | 2,390.83 | 374.16 |
| Birthing Parents Experiencing Miscarriage in Weeks 13 to 19 | | 2,390.83 | 99.21 |

Based on this analysis, it is estimated that an additional 119.87 public school employees per year will experience pregnancy loss between the 13th and 19th week of pregnancy. Assuming the proportion of employees experiencing pregnancy loss who are birthing employees is the same as the projected proportion of employees experiencing pregnancy in the 2023-2024 school year who are birthing employees, the number of birthing employees experiencing pregnancy loss would be 99.21.

The average cost of providing PPL, measured by the cost of hiring a substitute teacher for the affected period, is between \$2,340 (unlicensed) and \$2,740 (licensed) per employee for non-birthing parents, and between \$4,680 (unlicensed) and \$5,480 (licensed) for birthing parents. Table 14 below shows the projected statewide cost of PPL for these additional employees under the proposed rule and the two alternatives.

**Table 14 – Projected Cost of PPL for Miscarriages and Stillbirths Between 12 and 20 Weeks
(July 1, 2023 – July 1, 2024)**

| | Proposed Rule (4 Weeks of PPL for Birth Parent) | Alternative 1.0 (2 Weeks of PPL for Birth Parent) | Alternative 2.0 (8 Weeks of PPL for Birth Parent; 4 Weeks of PPL for Non-Birth Parent) |
|---|--|--|---|
| Number of Birthing Parent Employees (Projected) | 2,390.83 | 2,390.83 | 2,390.83 |

| | | | |
|--|---------------------|---------------------|---------------------|
| Number of Non-Birthing Parent Employees (Projected) | 497.70 | 497.70 | 497.70 |
| Total | 2,888.53 | 2,888.53 | 2,888.53 |
| Number of Miscarriages Among Birthing Parent Employees (Projected) | 99.21 | 99.21 | 99.21 |
| Number of Miscarriages Among Non-Birthing Parent Employees (Projected) | 20.66 | 20.66 | 20.66 |
| Average Daily Rate for Licensed Substitutes | \$137 | \$137 | \$137 |
| Average Daily Rate for Unlicensed Substitutes | \$117 | \$117 | \$117 |
| Total Cost of PPL for Birthing Employees Experiencing Miscarriage/Stillbirth (Licensed Substitute) | \$271,835.40 | \$135,917.70 | \$543,670.80 |
| Total Cost of PPL for Birthing Employees Experiencing Miscarriage/Stillbirth (Unlicensed Substitute) | \$232,151.40 | \$116,075.70 | \$464,302.80 |
| Total Cost of PPL for Non-Birthing Employees Experiencing Miscarriage/Stillbirth (Licensed Substitute) | \$0.00 | \$0.00 | \$56,608.40 |
| Total Cost of PPL for Non-Birthing Employees Experiencing Miscarriage/Stillbirth (Unlicensed Substitute) | \$0.00 | \$0.00 | \$48,344.40 |
| Total (Licensed Substitute) | \$271,835.40 | \$135,917.70 | \$600,279.2 |
| Total (Unlicensed Substitute) | \$232,151.40 | \$116,075.70 | \$512,647.20 |

Table 15 combines the cost estimates from Table 12, which lists cost estimates for pregnancy losses in the 20th week of pregnancy or later, and Table 14, which lists the cost estimates for pregnancy losses between Weeks 12 and 20.

Table 15 – Projected Cost of PPL for Miscarriages and Stillbirths After 12 Weeks (July 1, 2023 – July 1, 2024)

| | Proposed Rule (4 Weeks of PPL for Birth Parent) | Alternative 1.0 (2 Weeks of PPL for Birth Parent) | Alternative 2.0 (8 Weeks of PPL for Birth Parent; 4 Weeks of PPL for Non-Birth Parent) |
|--|--|--|---|
| Total Cost of PPL for Pregnancy Losses Between Weeks 12 and 20 (Licensed Substitute) | \$271,835.40 | \$135,917.70 | \$600,279.20 |
| Total Cost of PPL for Pregnancy Losses Between Weeks 12 and 20 (Unlicensed Substitute) | \$232,151.40 | \$116,075.70 | \$512,647.20 |
| Total Cost of PPL for Pregnancy Losses After Week 20 (Licensed Substitute) | \$50,662.60 | \$25,331.30 | \$151,987.80 |
| Total Cost of PPL for Pregnancy Losses After Week 20 (Unlicensed Substitute) | \$43,266.60 | \$21,633.30 | \$129,799.80 |

| | | | |
|--------------------------------------|---------------------|---------------------|---------------------|
| Total (Licensed Substitute) | \$322,498.00 | \$161,249.00 | \$752,267.00 |
| Total (Unlicensed Substitute) | \$275,418.00 | \$137,709.00 | \$642,447.00 |

As shown in Table 5, the proposed SBE rule, which provides four weeks of PPL to a birthing parent if the miscarriage occurs after the 12th week of pregnancy but prior to an expected birth, has an expected cost of between **\$275,418.00** and **\$323,498.00** per year. If the rule provided two weeks of PPL to the birth parent, these costs would be cut in half. If the rule provided the same amount of PPL following a miscarriage as it would for a completed birth, these costs would more than double. For reasons previously discussed, these ranges are likely an overestimate because not all public-school employees will require a substitute teacher during their absence.

These costs can be compared to the overall cost of the PPL benefit, which had a total projected cost of between \$12,353,702 and \$14,465,446 for fiscal year 2023-2024.⁶² (These figures are part of the regulatory baseline, based on what is minimally required by statute.) The provision of the SBE rule regarding miscarriages and stillbirths would be expected to increase the program’s total annual cost by \$275,418.00 to \$323,498.00, or 2.2%. The two-week PPL alternative would increase the total annual cost by 1.1%. The alternative that provides the same amount of PPL following pregnancy loss as for a birth where the child survives would be expected to increase the total annual by 5.2%.

(5) PPL Following Death of a Newborn Child

Cost in Addition to Regulatory Baseline: \$48,508.20 to \$113,600.40 per year statewide.

G.S. 126-8.6 specifies that an eligible employee shall be entitled to PPL “after giving birth to a child” or “after any other qualifying event.” It does not address, however, whether one is entitled to PPL if the child dies in the hours or days following birth. Subparagraph (f)(3) provides that under these circumstances, both parents are entitled to the full amount of PPL they would have otherwise received had the child survived. This provision reflects the reality that the parents of a child who has died are certain to be experiencing extreme grief and trauma. “The death of a child is one of the most painful events that an adult can experience and is linked to complicated/traumatic grief reactions.”⁶³

The cost of extending PPL under these circumstances is expected to be relatively small. Based on the statewide projected use of PPL by public school employees in Table 5, 3,048.84 eligible employees will utilize PPL in the 2023-2024 fiscal year. The 2021 infant mortality rate in North Carolina for children less than one year old was 6.8 per 1,000 live births (0.68%).⁶⁴ On average, therefore, 0.68% of the 3,048.84 public school employees projected to use PPL in the 2023-2024 fiscal year, or 20.73 employees, are expected to experience the death of their child within the first year. The average cost of providing PPL, measured by the cost of hiring a substitute teacher for the affected period, is between \$2,340 (unlicensed) and \$2,740 (licensed) per employee for non-birthing parents, and between \$4,680 (unlicensed) and \$5,480 (licensed) for birthing parents. Multiplying each of these numbers by 20.73 yields potential statewide cost

⁶² See Table 10.

⁶³ Catherine H. Rogers et al., *Long-Term Effects of the Death of a Child on Parents’ Adjustment in Midlife*, JOURNAL OF FAMILY PSYCHOLOGY, 22(2), 203-211 (2008), available through PubMed at [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2841012/#:~:text=For%20parents%2C%20the%20dissolution%20of,child%20\(Gilbert%2C%201997\).](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2841012/#:~:text=For%20parents%2C%20the%20dissolution%20of,child%20(Gilbert%2C%201997).)

⁶⁴ N.C. Department of Health & Human Services, *North Carolina Vital Statistics*, Vol. 1, “Selected Vital Statistics for 2021 and 2017-2021,” available at <https://schs.dph.ncdhhs.gov/data/vital/volume1/2021/2021-VS-Vol1-NC-StateTables.pdf>.

ranges of \$48,508.20 to \$56,800.20 (in a scenario where all employees whose child died did not give birth) and \$97,016.40 to \$113,600.40 (in a scenario where all employees whose child died gave birth to the child).

For reasons previously discussed, these ranges are likely an overestimate because not all public school employees will require a substitute teacher during their absence. In addition, these numbers are likely an overestimate because some children who die within the first year would do so after the parents had already taken their four or eight weeks of PPL.

(6) When Pregnancy Loss Becomes a Qualifying Event

Cost of Proposed Rule (12 Week Threshold): \$275,418 to \$322,498 per year.

Cost of Alternative #1 (8 Week Threshold): \$918,801 to \$1,075,861 per year.

Cost of Alternative #2 (19 Week Threshold): \$43,266.60 to \$50,662.60 per year.

G.S. 126-8.6(c1) requires the SHRC, and by extension the SBE, to “adopt rules and policies providing for ... how much leave is to be provided in the event of a miscarriage or the death of a child during birth.” However, the statute does not establish the number of weeks after which a pregnancy loss becomes a qualifying event for PPL.

According to the CDC, “a miscarriage is usually defined as loss of a baby before the 20th week of pregnancy, and a stillbirth is loss of a baby at or after 20 weeks of pregnancy.”⁶⁵ The World Health Organization (“WHO”) defines stillbirth as a “baby who dies after 28 weeks of pregnancy, but before or during birth.”⁶⁶ The International Classification of Diseases, which is managed by the WHO, defines stillbirths as “the death of a fetus that has reached a birth weight of 500 g.”⁶⁷ Given the lack of consistent and common terminology, the SBE prefers not to adopt formal definitions and to instead discuss the development of a pregnancy in terms of the number of completed weeks.

Paragraph (f) of the proposed SBE rule provides that, if a fetus dies before the conclusion of the 12th week of pregnancy, there is no “qualifying event” creating an entitlement to PPL under the rule. The 12-week threshold is consistent with Part I of S.L. 2023-14, which enacted G.S. 126-8.6. Table 12 below reports the cost of PPL under the proposed rule compared to alternatives in which an 8 weeks or 19 weeks serves as the threshold for a qualifying event.

⁶⁵ U.S. Centers for Disease Control and Prevention, *What Is Stillbirth?* (last updated Sept. 29, 2022), <https://www.cdc.gov/ncbddd/stillbirth/facts.html>.

⁶⁶ World Health Organization, *Stillbirth*, https://www.who.int/health-topics/stillbirth#tab=tab_1 (last accessed Apr. 10, 2024).

⁶⁷ Fernanda Tavares da Silva, *Stillbirth: Case Definition and Guidelines for Data Collection, Analysis and Presentation of Maternal Immunization Safety Data*, VACCINE (Dec. 1, 2016), Table 1, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5139804/> (last accessed Apr. 10, 2024).

**Table 16 – Projected Cost of PPL for Miscarriages and Stillbirths After 8, 12, and 19 Weeks
(July 1, 2023 – July 1, 2024)**

| <i>NOTE: Analysis assumes that a miscarriage results in four weeks of PPL for a birthing parent and none for a non-birthing parent, as provided in the proposed rule.</i> | Proposed Rule (12 Weeks) | Alternative 1.0 (8 Weeks) | Alternative 2.0 (19 Weeks) |
|---|-------------------------------------|--------------------------------------|---------------------------------------|
| Number of Birthing Parent Employees (Projected) | 2,390.83 | 2,390.83 | 2,390.83 |
| Number of Non-Birthing Parent Employees (Projected) | 497.70 | 497.70 | 497.70 |
| Total | 2,888.53 | 2,888.53 | 2,888.53 |
| Number of Miscarriages Among All Parent Employees Before Week Between Threshold and Before Week 20 (Projected) ⁶⁸ | 99.21 | 374.16 | 0 |
| | Weeks 13 to 19 | Weeks 8 to 19 | Week 20 |
| Average Daily Rate for Licensed Substitutes | \$137 | \$137 | \$137 |
| Average Daily Rate for Unlicensed Substitutes | \$117 | \$117 | \$117 |
| Total Cost of PPL for Birthing Employees Experiencing Miscarriage/Stillbirth (Licensed Substitute) | \$271,835.40 | \$1,025,198.40 | \$0.00 |
| Total Cost of PPL for Birthing Employees Experiencing Miscarriage/Stillbirth (Unlicensed Substitute) | \$232,151.40 | \$875,534.40 | \$0.00 |
| Total Cost of PPL for Non-Birthing Employees Experiencing Miscarriage/Stillbirth (Licensed Substitute) | \$0.00 | \$0.00 | \$0.00 |
| Total Cost of PPL for Non-Birthing Employees Experiencing Miscarriage/Stillbirth (Unlicensed Substitute) | \$0.00 | \$0.00 | \$0.00 |
| Total Cost of PPL for Birthing Employees Experiencing Miscarriage/Stillbirth (Licensed Substitute) | \$50,662.60 | \$50,662.60 | \$50,662.60 |
| Total Cost of PPL for Birthing Employees Experiencing Miscarriage/Stillbirth (Unlicensed Substitute) | \$43,266.60 | \$43,266.60 | \$43,266.60 |
| Total (Licensed Substitute) | \$322,498.00 | \$1,075,861.00 | \$50,662.60 |
| Total (Unlicensed Substitute) | \$275,418.00 | \$918,801.00 | \$43,266.60 |

The costs reflected above are not separate from the costs shown in Table 15; instead, Table 16 is meant to be a sensitivity analysis demonstrating the effect of changing the threshold before which a miscarriage would mean the birthing parent is not entitled to PPL. Providing PPL for miscarriages that occur after 8 weeks would increase the program cost to between \$918,801.00 and \$1,075,861.00 above the regulatory baseline, an increase of \$643,383 to \$753,363 over the proposed rule. Providing PPL only for miscarriages

⁶⁸ See Table 13.

at the beginning of Week 20 would decrease the program cost to \$43,266.60 to \$50,662.20 above the regulatory baseline, a savings of between \$232,151.40 and \$271,035.40 compared to the proposed rule.

These costs can be compared to the overall cost of the PPL benefit, which had a total projected cost of between \$12,353,702 and \$14,465,446 for fiscal year 2023-2024.⁶⁹ (These figures are part of the regulatory baseline based on what is minimally required by statute.). The provision of the SBE rule providing four weeks of PPL to a birthing parent will increase the cost of the PPL benefit by \$275,418.00 to \$323,498.00, or 2.2%. Providing four weeks of PPL to a birthing parent after eight weeks of pregnancy would increase the cost by 7.4%. Providing four weeks of PPL to a birthing parent only after 20 weeks of pregnancy would increase the cost by 0.4%. For reasons previously discussed, these ranges are likely an overestimate because not all public school employees will require a substitute teacher during their absence.

(7) Prohibition on Donating Leave to Another Employee

Cost in Addition to Regulatory Baseline: Zero.

Savings Compare to Alternatives Allowing Donation of Leave: Up to \$2,459,125.89 per year.

Subparagraph (h)(3) states that one eligible employee cannot donate PPL to another eligible employee. This is not part of the regulatory baseline because the statute does not require that the SBE rule include this provision. Unlike OSHR, which has a centralized voluntary shared leave system for all State employees, there is no centralized shared leave program for public school employees. Existing SBE rules allow (but do not require) LSAUs to establish a voluntary shared sick leave bank for its employees.⁷⁰ Not all LSAUs have established such a program, and charter schools are generally free to set their own personnel policies.

The SBE could rewrite both Rule 16 NCAC 06C .0402(j) and the proposed PPL rule to allow eligible employees to donate unused PPL. This alternative would inevitably lead to an increased cost to employers, equivalent to the value of any PPL that would otherwise go unused. The SBE does not have reliable data on the amount of available PPL leave that has gone unused since July 1, 2023, and a 100% utilization rate is highly improbable. For purposes of discussion, however, this analysis will use the utilization rate for State employees as reported in the SHRC fiscal note for parental leave. According to the SHRC, executive branch employees used only 83% of the PPL that they were awarded in 2022-2023.

Table 17 shows the total number of days of PPL expected to be utilized statewide from July 1, 2023 – July 1, 2024 based on the projections from Table 5.

**Table 17 – Projected Statewide PPL Utilization in Hours
(July 1, 2023 – July 1, 2024)**

| Number of Birthing Employees Awarded PPL (Projected) | Total Days of PPL (8 Weeks of Leave) | Number of Non-Birthing Employees Awarded PPL (Projected) | Total Days of PPL (4 Weeks of Leave) | Cumulative Total Days of PPL |
|---|---|---|---|-------------------------------------|
| 2,390.83 | 95,633.2 | 497.7 | 9,954 | 105,587.2 |

⁶⁹ See Table 10.

⁷⁰ 16 NCAC 06C .0402(j).

If public school employees utilized only 83% of the cumulative total days of PPL during this period, that would leave approximately 17,949.82 unused days of PPL (105,587.2 x 0.17). Assuming that all these employees required a substitute teacher and the average daily rates for substitute teachers discussed above, this would result in potential savings of **\$2,100,129.41** to **\$2,459,125.89** statewide. An alternative provision that allows half of the awarded PPL time to be donated as voluntary shared leave would have half this cost. In practice, the actual cost would be less, as eligible employees would likely donate only a fraction of their unused PPL. By not allowing PPL to be donated as voluntary shared leave, the SBE and its constituent PSUs avoid these costs.

In addition to these direct cost savings, prohibiting PPL from being donated through voluntary shared leave results in nonquantifiable administrative cost savings. Voluntary shared leave programs are cumbersome to administer even for sick leave (which is why not ever LSAU creates one), where the typical beneficiaries—employees experiencing catastrophic or prolonged illness or debilitation—are few and far between. A requirement that PPL—which has far more potential beneficiaries—be eligible for donation would likely require a substantial number of working hours and could require a PSU to hire additional staff. Prolonged absence for parental leave would also not have the same policy justification as prolonged sick leave—whereas a person receiving donated sick leave is typically incapable of returning to work due to illness, a person receiving parental leave will ordinarily be capable of returning to work after 4 to 8 weeks.⁷¹

(8) Employee Discretion to Use PPL Anytime During 12-Month Period

Cost in Addition to Regulatory Baseline: Zero.

Savings Compared to Alternatives: Nonquantifiable.

Subparagraph (i)(1) establishes that an eligible employee may use PPL any time during the 12 months following a qualifying event on either a continuous or intermittent basis, without prior approval from their employer. Continuous and intermittent leave are defined in Paragraph (a).

This provision differs from the SHRC rule, which allows a State agency to delay or require intermittent use of PPL by a *non-birthing* State employee if the agency determines that providing the leave at the time of the qualifying event would “cause a public safety concern, meaning a significant impairment to the agency’s ability to conduct its operations in a manner that protects the health and safety of North Carolinians.”⁷² The SBE considered this provision extensively and concluded that the rationale for its inclusion in the SHRC rules simply was not relevant to the public-school setting and would impose undue burdens on public school employees entitled to PPL. The SHRC provision appears designed for state employees who are responsible for public health and safety, such as law enforcement officers, prison guards, and hospital staff. Although public school employees do have some obligations for the safety and well-being of students (see, e.g., G.S. 115C-307 (“Duties of teachers”)), those obligations do not rise to the level of public safety officers or healthcare professionals. Moreover, most public-school employees who will be taking this leave are teachers, and, as has been established, public-school units are required to hire substitute teachers when a teacher is out of the classroom. Finally, the SBE is aware of no other circumstances in which a public-school unit could deny a request by a public-school employee to use other forms of leave due to a public

⁷¹ In the event an employee experiences long-term complications related to a birth, that employee would likely be eligible for voluntary sick leave donations to the extent a PSU has such a program in place.

⁷² 25 NCAC 01E .1907(d). Agencies may not deny, delay, or require intermittent use of PPL to birthing employees. 25 NCAC 01E .1907(c).

health or safety issue, so the SBE has not envisioned a circumstance in which such a provision could appropriately be invoked in a public school setting.

This provision does not alter the eligibility requirements for PPL or the amount of leave to which an eligible employee would be entitled, so it will not impose additional costs or savings beyond the regulatory baseline. The rule simply provides administrative clarity regarding the timing of when PPL may be used.

(9) Limitation on Number of Times PPL Can Be Used in a 12-Month Period

Cost in Addition to Regulatory Baseline: Zero.

Savings Compared to Alternatives: Nonquantifiable.

Subparagraph (i)(3) limits an eligible employee to one award of PPL within a rolling 12-month period. This provision functions primarily to limit the level of disruption within a PSU from absences due to PPL. It is unlikely that this would result in a material change in expenditures, since there are physical limitations on the number times a person can give birth in a year, and multiple adoptions or foster placements in the same year are rare. This provision would not prevent an employee who experiences multiple births, adoptions, or placements in a year from utilizing other leave programs, such as vacation or sick leave.⁷³ As a result, the proposed rule does not add any cost to the regulatory baseline.

Data limitations make it difficult to compare the potential cost (or savings) of this provision to an alternative that did not limit the number of times PPL can be used within a 12-month period. The SBE does not have data showing the frequency at which public school employees have experienced multiple foster care placements or adoptions within a 12-month period. The only available data on birth spacing is a CDC study that identifies the percentage of births that have an interval of 24 or fewer months between the first and second birth;⁷⁴ however this percentage (18.7%) does not reveal the number of parents who have multiple births within a 12-month period.

Summary

Table 18 reflects the cumulative cost of the SBE rule over the regulatory baseline. As previously noted, this fiscal note treats G.S. 126-8.6 as the regulatory baseline and estimates the cost for public school employees based on the areas of discretion reflected in the SHRC rule.

**Table 18 – Projected Cost of Proposed SBE Rule 16 NCAC 06C .0408
(July 1, 2023 – July 1, 2024)**

| Area of SHRC/SBE Discretion | Cost in Addition to Regulatory Baseline |
|---|---|
| (1) Minimum Service Period Prior to Eligibility for PPL | \$0.00 |
| (2) Categorization of Leave Between Birthing Parents and Non-Birthing Parents | \$0.00 |

⁷³ Even before the enactment of S.L. 2023-14, state law had long permitted public school employees to use annual leave or sick leave to care for a newborn child, an adopted child, or a foster child. *See* G.S. 115C-336.1.

⁷⁴ U.S. Centers for Disease Control and Prevention, National Health Statistics Reports, “Fertility of Men and Women Aged 15–49 in the United States: National Survey of Family Growth, 2015–2019,” Table 6 (Jan. 10, 2023), <https://www.cdc.gov/nchs/data/nhsr/nhsr179.pdf>.

| | |
|--|------------------------------------|
| (3) Leave Administration for Adoption and Foster Care Placement | \$0.00 |
| (4) PPL Following Miscarriage or Stillbirth | \$275,418.00 - \$322,498.00 |
| (5) PPL Following Death of a Newborn Child | \$48,508.20 - \$113,600.40 |
| (6) When Pregnancy Loss Becomes a Qualifying Event | [Encompassed in Area (4)] |
| (7) Prohibition on Donating Leave to Another Employee | \$0.00 |
| (8) Employee Discretion to Use PPL Anytime During 12-Month Period | \$0.00 |
| (9) Limitation on Number of Times PPL Can Be Used in a 12-Month Period | \$0.00 |
| TOTAL | \$323,926.20 - \$436,098.40 |

Compared to the regulatory baseline, which includes G.S. 126-8.6, the SBE estimates the proposed rules will have an annual cost of between **\$323,926.20** and **\$436,098.40** statewide. This amounts to between **2.6%** and **3.0%** of the projected cost of the PPL benefit of between \$12,353,702 and \$14,465,446 for fiscal year 2023-2024.

For purposes of this analysis, we assumed that the rate of PPL uptake will remain constant, and public school employee salaries will increase by about 3% (on average) in FY24-25 and 3% per year thereafter due to legislative increases. Using a 7% discount factor, the 5-year present value of the quantifiable costs to state and local government would be between \$1,486,459 and \$2,023,444 (in 2023\$). Public school employees using PPL will receive a benefit equivalent to this salary cost. As such, the *net* present value will essentially be zero. Note this NPV calculation does not account for significant unquantifiable benefits to both the employees and the employers.

As noted throughout this analysis, these projected costs are based on limited data and key assumptions that likely overestimate costs in some areas and underestimate costs in other areas. Costs are likely overestimated in that they assume that substitute teachers will be needed for all PPL-related public school employee absences. Costs are also likely overestimated in that they do not reflect the fact that a relatively high proportion of employees using PPL will be younger and earlier in their careers and thus earning below the average/median compensation rate. Conversely, costs may be underestimated in that they assume current workforce levels, which are experiencing historically high vacancy and attrition rates, will remain constant. There is also a high degree of variability between PSUs depending on their funding sources and how they choose to cover absences, which adds to the uncertainty of these cost estimates. Lastly, there is uncertainty as to how many charter schools will ultimately choose to opt in to the PPL program.

To help the public school system pay for the PPL benefit, the General Assembly has appropriated \$10,000,000 in supplemental recurring funds for the 2023-2024 and 2024-2025 school year for the purpose of hiring substitute teachers. Based on this analysis, the SBE anticipates that this supplemental appropriation will be sufficient to cover most, if not all, of the cost to PSUs to administer PPL, at least for classroom teachers and others requiring a substitute teacher. To the extent that the appropriation is insufficient, or the General Assembly fails to continue this supplemental appropriation in future biennial budgets, PSUs will need to rely on other funding sources. These sources include both existing State fund for substitute teachers and other unlicensed (which has been augmented by the supplemental appropriations) personnel and local funds.

Copy of Proposed Rule

16 NCAC 06C .0408 PARENTAL LEAVE

(a) For the purposes of this Rule, the following definitions shall apply:

- (1) “Child” means a newborn biological child or a newly placed adopted, foster, or otherwise legally placed child under the age of 18 whose parent is an eligible employee.
- (2) “Continuous” leave means leave taken over a continuous period for the full amount of leave to which an eligible employee is entitled under Paragraph (c) of this Rule.
- (3) “Eligible employee” means a person employed to fill a permanent, probationary, or time-limited position in a public-school unit (“PSU”) who meets the eligibility requirements set forth in Paragraph (b) of this Rule. “Eligible employee” shall not include temporary employees or independent contractors.
- (4) “Intermittent” leave means leave taken in separate periods for a single qualify event that cumulatively equal the amount of leave to which an eligible employee is entitled under Paragraph (c) of this Rule. Intermittent leave may include periods of leave ranging from half of an employee’s regularly scheduled workday to several consecutive workdays.
- (3) “Parent” means the legal guardian or custodian of a child through birth, adoption, foster care, or other legal placement.
- (4) “Public school unit” or “PSU” is defined in G.S. 115C-5(7a). This Rule shall only apply to a charter school if the board of directors for the charter school has opted to provide for paid parental leave in accordance with G.S. 115C-218.90(a)(6). The board shall notify the Division of Financial and Business Services at the Department of Public Instruction of its intent to offer paid parental leave no later than October 1 of the fiscal year for which it intends the leave to be available.
- (5) “Qualifying event” means when an eligible employee becomes a parent to a child.

(b) To be eligible for paid parental leave, a PSU employee shall, at the time of the qualifying event, have been in pay status, as defined in 25 NCAC 01D .0105, with a PSU, state agency, or other public entity providing paid parental leave under G.S. 126-8.6 for at least 1,040 hours without a break in service within the previous 12-month period. The employee may aggregate periods of employment with different employers to satisfy this requirement, except that any period of employment by a charter school shall not satisfy this requirement unless the governing board of the charter school has elected to provide paid parental leave in accordance with G.S. 115C-218.90(a)(6). For purposes of this Rule, a break in service is defined in 25 NCAC 01D .0144, provided it shall not include:

- (1) Any period in the past 12 months during which the employee was receiving workers’ compensation under G.S. 97-1 *et seq.* or on short-term disability under G.S. 135-105.
- (2) Any period in which the employee was on leave without pay.
- (3) Any period in which the employee was absent due to military service in the Armed Forces of the United States, in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301–4333.
- (4) For a 10- or 11-month employee whose employment will continue for the following school year, the time between the conclusion of one employment period and the commencement of the following employment period.
- (5) For an employee who transitions from one employer offering paid parental leave under G.S. 126-8.6 to another employer providing paid parental leave under G.S. 126-8.6, any time between the date of separation from the first employer and the date of hire for the second employer, not to exceed 31 days.

(c) A full-time eligible employee who becomes a parent to a child shall be entitled to the following:

- (1) For a parent who gives birth to a child, up to eight weeks of paid parental leave consisting of:
 - (A) Four weeks for physical and mental recuperation; and
 - (B) Four weeks for bonding with the child.
- (2) For any other qualifying event, up to four weeks of paid parental leave for bonding with the child.

(d) A part-time eligible employee who becomes a parent to a child shall be entitled to a prorated share of paid parental leave based upon the hours in the employee’s regular, weekly schedule compared to the hours worked by a full-time employee in a similar position within the PSU, provided that the prorated share of leave shall not exceed the total number of weeks provided to a full-time employee under Paragraph (c).

(e) If an eligible employee gives birth to a child and places the child up for adoption or into foster care, or otherwise legally places the child with another person to serve as the child’s parent, the employee shall be entitled to up to four

weeks of leave for physical and mental recuperation from the time of the child's birth. Neither a birthing parent nor a non-birthing parent shall be entitled to additional leave for bonding with the child.

- (f) If a fetus dies prior to a completed birth, or if a child dies after a completed birth, the following rules shall apply:
- (1) If the fetus dies before the conclusion of the 12th week of pregnancy, there is no qualifying event creating an entitlement to paid parental leave under this Rule.
 - (2) If the fetus dies after the conclusion of the 12th week of pregnancy but prior to a completed birth, an otherwise eligible employee who carried the child shall be entitled to up to four weeks of leave for physical and mental recuperation. Neither a birthing parent nor a non-birthing parent shall be entitled to additional leave for bonding with the child.
 - (3) If a child dies after a completed birth, an otherwise eligible employee shall be entitled to the same amount of leave to which the employee would be entitled under Paragraph (c) or (d).
- (g) The paid parental leave provided by this Rule shall result in compensation at 100 percent of the eligible employee's regular, straight-time pay.
- (h) The paid parental leave provided under this Rule is in addition to any other leave authorized by this Chapter, State or federal law, or policies established by the PSU, provided that the paid parental leave:
- (1) Shall not be counted against or deducted from an eligible employee's sick, vacation, bonus, or other accrued leave.
 - (2) Shall be reported by the PSU separately from all other paid leave.
 - (3) Shall not accrue and is not eligible for donation to another employee.
 - (4) Shall not be used for calculating the employee's retirement benefits.
 - (5) Shall run concurrently with any leave to which the employee may be entitled under the Family and Medical Leave Act, 28 U.S.C. §§ 2601–2654, provided the PSU has complied with the appropriate notice requirements in 29 C.F.R. § 825.300.
- (i) An eligible employee who requests paid parental leave shall do so in accordance with policies adopted by the employee's PSU, subject to the following:
- (1) The paid parental leave may be used any time during the 12 months following a qualifying event on either a continuous or intermittent basis. A PSU shall not deny or delay an employee's request to use paid parental leave, or otherwise require the employee to use the leave on a prescribed schedule, without the employee's consent.
 - (2) The employee shall provide advanced notice to the PSU of the employee's intent to use paid parental leave in accordance with policies adopted by the PSU. When possible, the employee shall provide notice at least ten (10) weeks in advance of a qualifying event, but under no circumstances shall a PSU require more than ten (10) weeks' notice.
 - (3) The paid parental leave provided by this Rule may be used only once for a qualifying event within a 12-month period. Multiple births, adoptions, or other legal placements within the same 12-month period shall not entitle an otherwise eligible employee to more than one award of paid parental leave.
 - (4) If both parents of a child are employed by the same PSU, the PSU shall permit both parents to take paid parental leave simultaneously if they so request, subject to Subparagraphs (1) and (2) of this Paragraph.
 - (5) An employee shall forfeit any unused paid parental leave 12 months after the date of the qualifying event.
- (j) This paid parental leave provided by this Rule applies only to requests for paid parental leave related to qualifying events occurring on or after July 1, 2023. Nothing in this Rule shall prohibit an employer, if authorized, from providing paid parental leave in amounts greater than what is required by this Rule.

History Note: Authority G.S. 115C-12(5); 115C-12(8); 115C-12(16); 115C-272; 115C-285; 115C-302.1; 115C-315; 126-8.6;
Temporary Adoption Eff. Oct. 27, 2023;
Eff. August 1, 2024.