

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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HOUSE BILL 1031\*  
Committee Substitute Favorable 6/12/18

Short Title: Local Ed. Funding Dispute Process.

(Public)

Sponsors:

Referred to:

May 31, 2018

A BILL TO BE ENTITLED

AN ACT REPEALING THE STATUTORY AUTHORITY FOR A LOCAL BOARD OF EDUCATION TO FILE A LEGAL ACTION CHALLENGING THE SUFFICIENCY OF THE FUNDS APPROPRIATED BY THE BOARD OF COUNTY COMMISSIONERS, PROVIDING A FORMULA FOR DETERMINING THE AMOUNT OF FUNDS TO BE APPROPRIATED IN THE EVENT A BUDGET DISPUTE CANNOT BE RESOLVED BY MEDIATION, AND ESTABLISHING A WORKING GROUP TO ADDRESS FUND BALANCES MAINTAINED BY LOCAL BOARDS OF EDUCATION, AS RECOMMENDED BY THE JOINT LEGISLATIVE PROGRAM EVALUATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 115C-431 reads as rewritten:

**"§ 115C-431. Procedure for resolution of dispute between board of education and board of county commissioners.**

(a) If the board of education determines that the amount of money appropriated to the local current expense fund, or the capital outlay fund, or both, by the board of county commissioners is not sufficient to support a system of free public schools, the chairman of the board of education and the chairman of the board of county commissioners shall arrange a joint meeting of the two boards to be held within seven days after the day of the county commissioners' decision on the school appropriations.

Prior to the joint meeting, the Senior Resident Superior Court Judge shall appoint a mediator unless the boards agree to jointly select a mediator. The mediator shall preside at the joint meeting and shall act as a neutral facilitator of disclosures of factual information, statements of positions and contentions, and efforts to negotiate an agreement settling the boards' differences.

At the joint meeting, the entire school budget shall be considered carefully and judiciously, and the two boards shall make a good-faith attempt to resolve the differences that have arisen between them.

(b) If no agreement is reached at the joint meeting of the two boards, the mediator shall, at the request of either board, commence a mediation immediately or within a reasonable period of time. The mediation shall be held in accordance with rules and standards of conduct adopted under Chapter 7A of the General Statutes governing mediated settlement conferences but modified as appropriate and suitable to the resolution of the particular issues in disagreement.

Unless otherwise agreed upon by both boards, the following individuals shall constitute the two working groups empowered to represent their respective boards during the mediation:

(1) The chair of each board or the chair's designee;



- 1 (2) The superintendent of the local school administrative unit and the county
- 2 manager or either's designee;
- 3 (3) The finance officer of each board; and
- 4 (4) The attorney for each board.

5 Members of both boards, their chairs, and representatives shall cooperate with and respond to all  
6 reasonable requests of the mediator to participate in the mediation. Notwithstanding Article 33C  
7 of Chapter 143 of the General Statutes, the mediation proceedings involving the two working  
8 groups shall be conducted in private. Evidence of statements made and conduct occurring in a  
9 mediation are not subject to discovery and are inadmissible in any court action. However, no  
10 evidence otherwise discoverable is inadmissible merely because it is presented or discussed in a  
11 mediation. The mediator shall not be compelled to testify or produce evidence concerning  
12 statements made and conduct occurring in a mediation in any civil proceeding for any purpose,  
13 except disciplinary hearings before the State Bar or any agency established to enforce standards  
14 of conduct for mediators. Reports by members of either working group to their respective boards  
15 shall be made in compliance with Article 33C of Chapter 143 of the General Statutes.

16 Unless both boards agree otherwise, or unless the boards have already resolved their dispute,  
17 the mediation shall end no later than August 1. The mediator shall have the authority to determine  
18 that an impasse exists and to discontinue the mediation. The mediation may continue beyond  
19 August 1 provided both boards agree. If both boards agree to continue the mediation beyond  
20 August 1, the board of county commissioners shall appropriate to the local school administrative  
21 unit for deposit in the local current expense fund a sum of money sufficient to equal the local  
22 contribution to this fund for the previous year.

23 If the working groups reach a proposed agreement, the terms and conditions must be  
24 approved by each board. If no agreement is reached, the mediator shall announce that fact to the  
25 chairs of both boards, the Senior Resident Superior Court Judge, and the public. The mediator  
26 shall not disclose any other information about the mediation. The mediator shall not make any  
27 recommendations or public statement of findings or conclusions.

28 The local board of education and the board of county commissioners shall share equally the  
29 mediator's compensation and expenses. The mediator's compensation shall be determined  
30 according to rules adopted under Chapter 7A of the General Statutes.

31 (b1) If agreement is not reached in mediation on the amount of money appropriated to the  
32 local current expense fund, and the amount to be appropriated has not been calculated pursuant  
33 to this subsection for longer than the prior year, the sum to be appropriated for the budget year  
34 in dispute shall be calculated as follows:

- 35 (1) The amount of moneys appropriated to the local current expense fund by the  
36 board of county commissioners in the prior fiscal year that are expended in  
37 that year by the local school administrative unit or transferred as required by  
38 G.S. 115C-75.10, 115C-218.105, 115C-238.70, and 116-239.11 shall be  
39 divided by the sum of the following: the average daily membership of the local  
40 school administrative unit plus the share of the average daily membership of  
41 any innovative, charter, regional, or laboratory school whose students reside  
42 in the local school administrative unit for the prior school year.
- 43 (2) The amount from subdivision (1) of this subsection, rounded to the nearest  
44 penny, shall then be multiplied by the sum of one plus the percent change in  
45 the second quarter Employment Cost Index for elementary and secondary  
46 school workers as reported by the Federal Bureau of Labor Statistics.
- 47 (3) The amount from subdivision (2) of this subsection, rounded to the nearest  
48 penny, shall then be multiplied by the sum of the following: the allotted  
49 average daily membership for the school year plus the share of the average  
50 daily membership of any innovative, charter, regional, or laboratory school

1 whose students reside in the local school administrative unit for the budget  
2 year in dispute.

3 The board of county commissioners shall appropriate to the local current expense fund the  
4 sum from subdivision (3) of this subsection, rounded to the nearest penny, to the local board of  
5 education for the budget year in dispute.

6 (b2) If agreement is not reached in mediation, and the amount to be appropriated has been  
7 calculated pursuant to subsection (b1) of this section to the local current expense fund for the  
8 prior two years, the sum to be appropriated for the budget year in dispute shall be calculated as  
9 follows:

10 (1) The amount of moneys appropriated to the local current expense fund by the  
11 board of county commissioners in the prior fiscal year that are expended in  
12 the prior fiscal year by the local school administrative unit and transferred as  
13 required by G.S. 115C-75.10, 115C-218.105, 115C-238.70, and 116-239.11  
14 shall be divided by the sum of the following: the average daily membership  
15 plus the share of the average daily membership of any innovative, charter,  
16 regional, or laboratory school whose students reside in the local school  
17 administrative unit for the prior school year.

18 (2) The percent change in the second quarter Employment Cost Index for  
19 elementary and secondary school workers as reported by the Federal Bureau  
20 of Labor Statistics shall be increased by three percent (3%).

21 (3) The amount from subdivision (1) of this subsection, rounded to the nearest  
22 penny, shall then be multiplied by the sum of one plus the sum from  
23 subdivision (2) of this subsection, rounded to the nearest penny.

24 (4) The amount from subdivision (3) of this subsection shall then be multiplied  
25 by the sum of the following: the allotted average daily membership for the  
26 school year plus the share of the average daily membership of any innovative,  
27 charter, regional, or laboratory school whose students reside in the local  
28 school administrative unit for the budget year in dispute.

29 The board of county commissioners shall appropriate to the local current expense fund the  
30 sum from subdivision (4) of this subsection, rounded to the nearest penny, to the local board of  
31 education for the budget year in dispute.

32 (b3) Neither the local board of education nor the board of county commissioners shall file  
33 any legal action challenging the determination as to the funds to be appropriated by the board of  
34 county commissioners to the local current expense fund in accordance with the formulas found  
35 in subsections (b1) and (b2) of this section.

36 (c) Within five days after an announcement of no agreement by the mediator, mediator  
37 on the amount of money to be appropriated to the capital outlay fund, the local board of education  
38 may file an action in the superior court division of the General Court of Justice. Either board has  
39 the right to have the issues of fact tried by a jury. When a jury trial is demanded, the cause shall  
40 be set for the first succeeding term of the superior court in the county, and shall take precedence  
41 over all other business of the court. However, if the judge presiding certifies to the Chief Justice  
42 of the Supreme Court, either before or during the term, that because of the accumulation of other  
43 business, the public interest will be best served by not trying the cause at the term next succeeding  
44 the filing of the action, the Chief Justice shall immediately call a special term of the superior  
45 court for the county, to convene as soon as possible, and assign a judge of the superior court or  
46 an emergency judge to hold the court, and the cause shall be tried at this special term. The judge  
47 shall find, or if the issue is submitted to the jury, the jury shall find the facts as to the following  
48 in order to maintain a system of free public schools as defined by State law and State Board of  
49 Education policy: (i) the amount of money legally necessary from all sources and (ii) the amount  
50 of money legally necessary from the board of county commissioners, commissioners to provide  
51 the local school administrative units with buildings suitably equipped, as required by

1 G.S. 115C-521(b). In making the finding, the judge or the jury shall consider the educational  
2 goals and policies of the State and the local board of education, the budgetary request of the local  
3 board of education, the financial resources of the county and the local board of education, and  
4 the fiscal policies of the board of county commissioners and the local board of education.

5 All findings of fact in the superior court, whether found by the judge or a jury, shall be  
6 conclusive. When the facts have been found, the court shall give judgment ordering the board of  
7 county commissioners to appropriate a sum certain to the local school administrative ~~unit~~,unit  
8 for the amount of money to be appropriated to the capital outlay fund and to levy such taxes on  
9 property as may be necessary to make up this sum when added to other revenues available for  
10 the purpose.

11 (d) An appeal from the judgement entered as provided in subsection (c) of this section  
12 may be taken to the appellate division of the General Court of Justice, and notice of appeal shall  
13 be given in writing within 10 days after entry of the judgment. All papers and records relating to  
14 the case shall be considered a part of the record on appeal. The conclusion of the school or fiscal  
15 year shall not be deemed to resolve the question in controversy between the parties while an  
16 appeal is still pending. Any final judgment shall be legally binding on the parties at the conclusion  
17 of the appellate process. The payment of any final judgment by the county in favor of the local  
18 school administrative unit shall not be considered, or used in any manner, to deny or reduce  
19 appropriations to the local school administrative unit by the county in fiscal years subsequent to  
20 the one at issue to offset such payment of a final judgment.

21 (e) If, in an action filed under ~~this section~~,subsection (c) of this section, the final judgment  
22 of the General Court of Justice is rendered after the due date prescribed by law for property taxes,  
23 the board of county commissioners is authorized to levy such supplementary taxes as may be  
24 required by the judgment, notwithstanding any other provisions of law with respect to the time  
25 for doing acts necessary to a property tax levy. Upon making a supplementary levy under this  
26 subsection, the board of county commissioners shall designate the person who is to compute and  
27 prepare the supplementary tax receipts and records for all such taxes. Upon delivering the  
28 supplementary tax receipts to the tax collector, the board of county commissioners shall proceed  
29 as provided in G.S. 105-321.

30 The due date of supplementary taxes levied under this subsection is the date of the levy, and  
31 the taxes may be paid at par or face amount at any time before the one hundred and twentieth day  
32 after the due date. On or after the one hundred and twentieth day and before the one hundred and  
33 fiftieth day from the due date there shall be added to the taxes interest at the rate of two percent  
34 (2%). On or after the one hundred and fiftieth day from the due date, there shall be added to the  
35 taxes, in addition to the two percent (2%) provided above, interest at the rate of three-fourths of  
36 one percent (3/4 of 1%) per 30 days or fraction thereof until the taxes plus interest have been  
37 paid. No discounts for prepayment of supplementary taxes levied under this subsection shall be  
38 allowed."

39 **SECTION 2.** G.S. 115C-432(a) reads as rewritten:

40 "(a) After the board of county commissioners has made its appropriations to the local  
41 school administrative unit, or after the appeal procedure set out in G.S. 115C-431 for the capital  
42 outlay fund has been concluded, the board of education shall adopt a budget resolution making  
43 appropriations for the budget year in such sums as the board may deem sufficient and proper.  
44 The budget resolution shall conform to the uniform budget format established by the State Board  
45 of Education."

46 **SECTION 3.(a)** The Local Government Commission and the School of Government  
47 at the University of North Carolina at Chapel Hill shall convene a working group to develop and  
48 recommend statutory parameters for fund balances maintained by local boards of education and  
49 for disputes related to the capital outlay fund. The working group shall include at least one  
50 representative from each of the following groups: the North Carolina Association of County  
51 Commissioners, the North Carolina School Boards Association, and the North Carolina

1 Association of School Business Officers. The working group shall produce findings and  
2 recommendations on the following issues:

3 (1) Relating to fund balances maintained by local boards of education the  
4 following:

5 a. Minimum and maximum fund balances, with a focus on  
6 unencumbered funds.

7 b. Appropriate uses of fund balances.

8 c. Annual reporting requirements for fund balances.

9 d. A process for factoring fund balances into annual local education  
10 budgets.

11 e. The role of boards of county commissioners, if any, in determining the  
12 use of fund balances.

13 (2) Relating to capital outlay funds, a mechanism for calculation by formula or  
14 other means to resolve disputes related to capital outlay as alternatives to  
15 litigation.

16 **SECTION 3.(b)** No later than March 30, 2019, the working group shall report its  
17 findings and recommendations, including statutory parameters and any proposed legislation, to  
18 the Joint Legislative Education Oversight Committee.

19 **SECTION 4.** This act is effective when it becomes law. Sections 1 and 2 apply  
20 beginning with budget ordinances adopted on or after that date.