

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

SESSION LAW 2018-83
HOUSE BILL 1031

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

Members of both boards, their chairs, and representatives shall cooperate with and respond to all reasonable requests of the mediator to participate in the mediation. Notwithstanding Article 33C



of Chapter 143 of the General Statutes, the mediation proceedings involving the two working groups shall be conducted in private. Evidence of statements made and conduct occurring in a mediation are not subject to discovery and are inadmissible in any court action. However, no evidence otherwise discoverable is inadmissible merely because it is presented or discussed in a mediation. The mediator shall not be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediation in any civil proceeding for any purpose, except disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators. Reports by members of either working group to their respective boards shall be made in compliance with Article 33C of Chapter 143 of the General Statutes.

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

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

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

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

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

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

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

- (1) The amount of moneys appropriated to the local current expense fund by the board of county commissioners in the prior fiscal year that are expended in the prior fiscal year by the local school administrative unit and transferred as required by G.S. 115C-75.10, 115C-218.105, 115C-238.70, and 116-239.11 shall be divided by the sum of the following: the average daily membership plus the share of the average daily membership of any innovative, charter, regional, or laboratory school whose students reside in the local school administrative unit for the prior school year.
- (2) The twelve month percent change in the second quarter Employment Cost Index for elementary and secondary school workers as reported by the Federal Bureau of Labor Statistics shall be increased by three percent (3%).
- (3) The amount from subdivision (1) of this subsection, rounded to the nearest penny, shall then be multiplied by the sum of one plus the sum from subdivision (2) of this subsection, rounded to the nearest penny.
- (4) The amount from subdivision (3) of this subsection shall then be multiplied by the sum of the following: the allotted average daily membership for the school year plus the share of the average daily membership of any innovative, charter, regional, or laboratory school whose students reside in the local school administrative unit for the budget year in dispute.

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

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

(c) Within five days after an announcement of no agreement on the amount of money to be appropriated to the capital outlay fund by the mediator, the local board of education may file an action in the superior court division of the General Court of Justice. Either board has the right to have the issues of fact tried by a jury. When a jury trial is demanded, the cause shall be set for the first succeeding term of the superior court in the county, and shall take precedence over all other business of the court. However, if the judge presiding certifies to the Chief Justice of the Supreme Court, either before or during the term, that because of the accumulation of other business, the public interest will be best served by not trying the cause at the term next succeeding the filing of the action, the Chief Justice shall immediately call a special term of the superior court for the county, to convene as soon as possible, and assign a judge of the superior court or an emergency judge to hold the court, and the cause shall be tried at this special term. The judge shall find, or if the issue is submitted to the jury, the jury shall find the amount of money legally necessary from the board of county commissioners to provide the local school administrative units with buildings suitably equipped, as required by G.S. 115C 521, facts as to the following in order to maintain a system of free public schools as defined by State law and State Board of Education policy: policy. (i) the amount of money legally necessary from all sources and (ii) the amount of money legally necessary from the board of county commissioners. In making the finding, the judge or the jury shall consider the educational goals and policies of the State and the local board of education, the budgetary request of the local board of education, the financial resources of the county and the local board of education, and the fiscal policies of the board of county commissioners and the local board of education.

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

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

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

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

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

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

SECTION 3.(a) The Local Government Commission and the School of Government at the University of North Carolina at Chapel Hill shall convene a working group to develop and recommend statutory parameters for fund balances maintained by local boards of education and for disputes related to the capital outlay fund. The working group shall include at least one representative from each of the following groups: the North Carolina Association of County Commissioners, the North Carolina School Boards Association, and the North Carolina Association of School Business Officers. The working group shall produce findings and recommendations on the following issues:

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

- a. Minimum and maximum fund balances, with a focus on unencumbered funds.
 - b. Appropriate uses of fund balances.
 - c. Annual reporting requirements for fund balances.
 - d. A process for factoring fund balances into annual local education budgets.
 - e. The role of boards of county commissioners, if any, in determining the use of fund balances.
- (2) Relating to capital outlay funds, a mechanism for calculation by formula or other means to resolve disputes related to capital outlay as alternatives to litigation.

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

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

In the General Assembly read three times and ratified this the 15th day of June, 2018.

s/ Bill Rabon
Presiding Officer of the Senate

s/ David R. Lewis
Presiding Officer of the House of Representatives

s/ Roy Cooper
Governor

Approved 10:45 a.m. this 25th day of June, 2018