



Bill Draft 2017-MT-146: Local Ed. Funding Dispute Process/PED Report.

2017-2018 General Assembly

Committee:	Joint Legislative Program Evaluation Committee	Date:	February 12, 2018
Introduced by:		Prepared by:	Matt M. Pagett
Analysis of:	2017-MT-146		Staff Attorney

OVERVIEW: Draft 2017-MT-146 would repeal law authorizing a local board of education to file a civil action against a county board of commissioners challenging the sufficiency of funds appropriated to it by the board of commissioners, substitute a default funding mechanism, and establish a working group to look into fund balances held by local boards of education, as recommended by a Program Evaluation Division Report.

CURRENT LAW: G.S. 115C-426 requires local boards of education to maintain a State Public School Fund, a local current expense fund, and a capital outlay fund. The local current expense fund and capital outlay fund consist, in part, of revenues appropriated by the county board of commissioners. G.S. 115C-429 requires the county board of commissioners to determine, by July 1, the amount of county revenue to be appropriated to the board of education. If the board of education determines the money appropriated to either the local current expense or capital outlay fund is insufficient, G.S. 115C-431 provides the following method of dispute resolution:

- The parties hold a joint meeting presided over by a mediator mutually agreed upon or appointed by the Senior Resident Superior Court Judge. The mediator facilitates the effort between the two boards to resolve the funding dispute. If no resolution is reached, a formal mediation is conducted.
- If the formal mediation is unsuccessful, the board of education may file a civil action in superior court to have either a judge or jury find as fact (i) the amount of funds legally necessary from all sources to maintain a system of free public schools and (ii) the amount of funds legally necessary from the board of commissioners.
- Once the facts regarding funding needs are found, the court enters a judgment ordering the board of commissioners to (i) appropriate the necessary sum to the board of education and (ii) levy any necessary taxes. After appeals are concluded, the final judgment is legally binding.

BILL ANALYSIS: Draft 2017-MT-146 would:

- Provide that if no agreement over funding is reached through joint meeting or formal mediation, a default funding mechanism is used. The default funding mechanism would follow the below 3-year cycle:
 - Year 1: Require an appropriation of the amount the local school administrative unit expended from the prior year's appropriation, updated to take into account the percent change in the federal Employment Cost Index (ECI) and the projected Average Daily Membership (ADM) for the upcoming school year.
 - Year 2: Require an appropriation of the amount the local school administrative unit expended from the prior year's appropriation, updated for ECI and projected ADM.

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Legislative Drafting
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Page 2

- Year 3: Require appropriation of the amount the local school administrative unit expended from the prior year's appropriation, updated for ECI and projected ADM, with three percent (3%) added to the ECI.
- The 3-year cycle would repeat until an agreement is reached.
- Prohibit the local board of education and the county board of commissioners from filing suit over the amount of funds to be appropriated according to the default funding mechanism.
- Make a conforming change to G.S. 115C-432, the board of education's budget resolution statute.
- Create working group to develop recommendations and statutory parameters for fund balances maintained by local boards of education. Report to the Joint Leg. Ed. Oversight Committee by March 30, 2019.

EFFECTIVE DATE: The bill would be effective when it becomes law.

BACKGROUND: The report, entitled "Local Education Funding Dispute Resolution Process is Effective and Economical, but Litigation Could be Eliminated," Report # 2017-05, May 1, 2017, can be found online at:

https://www.ncleg.net/PED/Reports/documents/DisputeResolution/Dispute_Resolution_Report.pdf.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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BILL DRAFT 2017-MTz-146 [v.8] (01/11)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
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Short Title: Local Ed. Funding Dispute Process/PED Report.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT REPEALING THE STATUTORY AUTHORITY FOR A LOCAL BOARD OF
3 EDUCATION TO FILE A LEGAL ACTION CHALLENGING THE SUFFICIENCY OF
4 THE FUNDS APPROPRIATED BY THE BOARD OF COUNTY COMMISSIONERS,
5 PROVIDING A FORMULA FOR DETERMINING THE AMOUNT OF FUNDS TO BE
6 APPROPRIATED IN THE EVENT A BUDGET DISPUTE CANNOT BE RESOLVED
7 BY MEDIATION, AND ESTABLISHING A WORKING GROUP TO ADDRESS FUND
8 BALANCES MAINTAINED BY LOCAL BOARDS OF EDUCATION, AS
9 RECOMMENDED BY A PROGRAM EVALUATION DIVISION REPORT.
10 The General Assembly of North Carolina enacts:
11 SECTION 1. G.S. 115C-431 reads as rewritten:
12 "§ 115C-431. Procedure for resolution of dispute between board of education and board
13 of county commissioners.
14 (a) If the board of education determines that the amount of money appropriated to the
15 local current expense fund, or the capital outlay fund, or both, by the board of county
16 commissioners is not sufficient to support a system of free public schools, the chairman of the
17 board of education and the chairman of the board of county commissioners shall arrange a joint
18 meeting of the two boards to be held within seven days after the day of the county
19 commissioners' decision on the school appropriations.
20 Prior to the joint meeting, the Senior Resident Superior Court Judge shall appoint a
21 mediator unless the boards agree to jointly select a mediator. The mediator shall preside at the
22 joint meeting and shall act as a neutral facilitator of disclosures of factual information,
23 statements of positions and contentions, and efforts to negotiate an agreement settling the
24 boards' differences.
25 At the joint meeting, the entire school budget shall be considered carefully and judiciously,
26 and the two boards shall make a good-faith attempt to resolve the differences that have arisen
27 between them.
28 (b) If no agreement is reached at the joint meeting of the two boards, the mediator shall,
29 at the request of either board, commence a mediation immediately or within a reasonable
30 period of time. The mediation shall be held in accordance with rules and standards of conduct
31 adopted under Chapter 7A of the General Statutes governing mediated settlement conferences
32 but modified as appropriate and suitable to the resolution of the particular issues in
33 disagreement.



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

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

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

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

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

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

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

1 of education, and the fiscal policies of the board of county commissioners and the local board
2 of education.

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

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

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

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

36 (f) If agreement is not reached in mediation, and the amount to be appropriated has not
37 been calculated pursuant to this subsection for longer than the prior year, the sum to be
38 appropriated for the budget year in dispute shall be calculated as follows:

- 39 (1) The amount expended in the prior fiscal year by the local school
40 administrative unit from moneys appropriated to the local current expense
41 fund and the capital outlay fund by the board of county commissioners in the
42 prior fiscal year shall be divided by the average daily membership of the
43 prior school year.
- 44 (2) The sum from subdivision (1) of this subsection, rounded to the nearest
45 penny, shall then be multiplied by the sum of one plus the percent change in
46 the second quarter Employment Cost Index for elementary and secondary
47 school workers as reported by the federal Bureau of Labor Statistics.
- 48 (3) The sum from subdivision (2) of this subsection, rounded to the nearest
49 penny, shall then be multiplied by the projected average daily membership
50 for the school year for the budget year in dispute.

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

4 (g) If agreement is not reached in mediation, and the amount to be appropriated has
5 been calculated pursuant to subsection (f) of this section for the prior two years, the sum to be
6 appropriated for the budget year in dispute shall be calculated as follows:

7 (1) The amount expended in the prior fiscal year by the local school
8 administrative unit from moneys appropriated to the local current expense
9 fund and the capital outlay fund by the board of county commissioners in the
10 prior fiscal year shall be divided by the average daily membership of the
11 prior school year.

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

15 (3) The sum from subdivision (1) of this subsection, rounded to the nearest
16 penny, shall then be multiplied by the sum of one plus the sum from
17 subdivision (2) of this subsection, rounded to the nearest penny.

18 (4) The sum from subdivision (3) of this subsection shall then be multiplied by
19 the projected average daily membership for the school year for the budget
20 year in dispute.

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

24 (h) Neither the local board of education nor the board of county commissioners shall
25 file any legal action challenging the determination as to the funds to be appropriated by the
26 board of county commissioners to the local current expense fund, the capital outlay fund, or
27 both in accordance with the formulas found in subsections (f) and (g) of this section."

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

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

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

42 (1) Minimum and maximum fund balances, with a focus on unencumbered
43 funds.

44 (2) Appropriate uses of fund balances.

45 (3) Annual reporting requirements for fund balances.

46 (4) A process for factoring fund balances into annual local education budgets.

47 (5) The role of boards of county commissioners, if any, in determining the use
48 of fund balances.

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

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