

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 305

Short Title: School Boards Can't Sue Counties. (Public)

Sponsors: Representatives Conrad, Potts, Ford, and Wray (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: State and Local Government I, if favorable, Judiciary IV

March 13, 2017

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.

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.~~ the decision of the county commissioners is final. The local board of education shall not file any legal action challenging the sufficiency of the funds appropriated by the board of county commissioners to the local current expense fund, the capital outlay fund, or both.

~~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~~



1 (4) The attorney for each board.

2 Members of both boards, their chairs, and representatives shall cooperate with and respond to
3 all reasonable requests of the mediator to participate in the mediation. Notwithstanding Article
4 33C of Chapter 143 of the General Statutes, the mediation proceedings involving the two working
5 groups shall be conducted in private. Evidence of statements made and conduct occurring in a
6 mediation are not subject to discovery and are inadmissible in any court action. However, no
7 evidence otherwise discoverable is inadmissible merely because it is presented or discussed in a
8 mediation. The mediator shall not be compelled to testify or produce evidence concerning
9 statements made and conduct occurring in a mediation in any civil proceeding for any purpose,
10 except disciplinary hearings before the State Bar or any agency established to enforce standards of
11 conduct for mediators. Reports by members of either working group to their respective boards
12 shall be made in compliance with Article 33C of Chapter 143 of the General Statutes.

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

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

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

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

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

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

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

19 ~~The due date of supplementary taxes levied under this subsection is the date of the levy, and~~
20 ~~the taxes may be paid at par or face amount at any time before the one hundred and twentieth day~~
21 ~~after the due date. On or after the one hundred and twentieth day and before the one hundred and~~
22 ~~fiftieth day from the due date there shall be added to the taxes interest at the rate of two percent~~
23 ~~(2%). On or after the one hundred and fiftieth day from the due date, there shall be added to the~~
24 ~~taxes, in addition to the two percent (2%) provided above, interest at the rate of three-fourths of~~
25 ~~one percent (3/4 of 1%) per 30 days or fraction thereof until the taxes plus interest have been paid.~~
26 ~~No discounts for prepayment of supplementary taxes levied under this subsection shall be~~
27 ~~allowed."~~

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 shall
33 conform to the uniform budget format established by the State Board of Education."

34 **SECTION 3.** This act is effective when it becomes law and applies beginning with
35 budget ordinances adopted on or after that date.