

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

4

SENATE BILL 366

Education/Higher Education Committee Substitute Adopted 4/14/97

House Committee Substitute Favorable 5/22/97

Fourth Edition Engrossed 6/11/97

Short Title: Revise Sch. Bd./Cty. Comm. Mediation.

(Public)

Sponsors:

Referred to:

March 11, 1997

A BILL TO BE ENTITLED

AN ACT TO REVISE THE MEDIATION PROCEDURE FOR RESOLVING SCHOOL BUDGET DISPUTES BETWEEN LOCAL BOARDS OF EDUCATION AND BOARDS OF COUNTY COMMISSIONERS, AND TO CLARIFY THE SCOPE OF THE SCHOOL FACILITIES GUIDELINES.

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

1 at the joint meeting and shall act as a neutral facilitator of disclosures of factual
2 information, statements of positions and contentions, and efforts to negotiate an
3 agreement settling the boards' differences.

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

7 (b) ~~If no agreement is reached at the joint meeting of the two boards, either board~~
8 ~~may notify the clerk of superior court who shall request the appointment of a mediator by~~
9 ~~superior court under G.S. 7A-38.1. The mediator shall be appointed within five days of~~
10 ~~the notification to the clerk. The mediator shall present recommendations for resolution~~
11 ~~of the matters in dispute within 15 days of the notification to the clerk. the mediator shall,~~
12 at the request of either board, commence a mediation immediately or within a reasonable
13 period of time. The mediation shall be held in accordance with rules and standards of
14 conduct adopted under Chapter 7A of the General Statutes governing mediated settlement
15 conferences but modified as appropriate and suitable to the resolution of the particular
16 issues in disagreement.

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

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

21 (2) The superintendent of the local school administrative unit and the
22 county manager or either's designee;

23 (3) The finance officer of each board; and

24 (4) The attorney for each board.

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

38 Unless both boards agree otherwise, or unless the boards have already resolved their
39 dispute, the mediation shall end no later than August 1. The mediator shall have the
40 authority to determine that an impasse exists and to discontinue the mediation. The
41 mediation may continue beyond August 1 provided both boards agree. If both boards
42 agree to continue the mediation beyond August 1, the board of county commissioners
43 shall appropriate to the local school administrative unit for deposit in the local current

1 expense fund a sum of money sufficient to equal the local contribution to this fund for the
2 previous year.

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

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

12 (c) ~~Within five days of receiving the recommendations of the mediator, either board~~
13 after an announcement of no agreement by the mediator, the local board of education
14 may file an action in the superior court division of the General Court of Justice. The court
15 shall find the facts as to the amount of money necessary to maintain a system of free
16 public schools, and the amount of money needed from the county to make up this total.
17 Either board has the right to have the issues of fact tried by a jury. When a jury trial is
18 demanding, the cause shall be set for the first succeeding term of the superior court in the
19 county, and shall take precedence over all other business of the court. However, if the
20 judge presiding certifies to the Chief Justice of the Supreme Court, either before or
21 during the term, that because of the accumulation of other business, the public interest
22 will be best served by not trying the cause at the term next succeeding the filing of the
23 action, the Chief Justice shall immediately call a special term of the superior court for the
24 county, to convene as soon as possible, and assign a judge of the superior court or an
25 emergency judge to hold the court, and the cause shall be tried at this special term. The
26 issue submitted to the jury shall be what amount of money is needed from sources under
27 the control of the board of county commissioners to maintain a system of free public
28 schools.

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

34 (d) If an appeal is taken to the appellate division of the General Court of Justice,
35 and if such an appeal would result in a delay beyond a reasonable time for levying taxes
36 for the year, the judge shall order the board of county commissioners to appropriate to the
37 local school administrative unit for deposit in the local current expense fund a sum of
38 money sufficient when added to all other moneys available to that fund to equal the
39 amount of this fund for the previous year. All papers and records relating to the case shall
40 be considered a part of the record on appeal.

41 (e) If, in an action filed under this section, the final judgment of the General Court
42 of Justice is rendered after the due date prescribed by law for property taxes, the board of
43 county commissioners is authorized to levy such supplementary taxes as may be required

1 by the judgment, notwithstanding any other provisions of law with respect to the time for
2 doing acts necessary to a property tax levy. Upon making a supplementary levy under
3 this subsection, the board of county commissioners shall designate the person who is to
4 compute and prepare the supplementary tax receipts and records for all such taxes. Upon
5 delivering the supplementary tax receipts to the tax collector, the board of county
6 commissioners shall proceed as provided in G.S. 105-321.

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

16 Section 2. G.S. 143-318.11(a)(3) reads as rewritten:

17 "(a) Permitted Purposes. – It is the policy of this State that closed sessions shall be
18 held only when required to permit a public body to act in the public interest as permitted
19 in this section. A public body may hold a closed session and exclude the public only
20 when a closed session is required:

- 21 (1) To prevent the disclosure of information that is privileged or
22 confidential pursuant to the law of this State or of the United States, or
23 not considered a public record within the meaning of Chapter 132 of the
24 General Statutes.
- 25 (2) To prevent the premature disclosure of an honorary degree, scholarship,
26 prize, or similar award.
- 27 (3) To consult with an attorney employed or retained by the public body in
28 order to preserve the attorney-client privilege between the attorney and
29 the public body, which privilege is hereby acknowledged. General
30 policy matters may not be discussed in a closed session and nothing
31 herein shall be construed to permit a public body to close a meeting that
32 otherwise would be open merely because an attorney employed or
33 retained by the public body is a participant. The public body may
34 consider and give instructions to an attorney concerning the handling or
35 settlement of a claim, judicial action, mediation, arbitration, or
36 administrative procedure. If the public body has approved or considered
37 a settlement, other than a malpractice settlement by or on behalf of a
38 hospital, in closed session, the terms of that settlement shall be reported
39 to the public body and entered into its minutes as soon as possible
40 within a reasonable time after the settlement is concluded.
- 41 (4) To discuss matters relating to the location or expansion of industries or
42 other businesses in the area served by the public body.

- 1 (5) To establish, or to instruct the public body's staff or negotiating agents
2 concerning the position to be taken by or on behalf of the public body in
3 negotiating (i) the price and other material terms of a contract or
4 proposed contract for the acquisition of real property by purchase,
5 option, exchange, or lease; or (ii) the amount of compensation and other
6 material terms of an employment contract or proposed employment
7 contract.
- 8 (6) To consider the qualifications, competence, performance, character,
9 fitness, conditions of appointment, or conditions of initial employment
10 of an individual public officer or employee or prospective public officer
11 or employee; or to hear or investigate a complaint, charge, or grievance
12 by or against an individual public officer or employee. General
13 personnel policy issues may not be considered in a closed session. A
14 public body may not consider the qualifications, competence,
15 performance, character, fitness, appointment, or removal of a member of
16 the public body or another body and may not consider or fill a vacancy
17 among its own membership except in an open meeting. Final action
18 making an appointment or discharge or removal by a public body
19 having final authority for the appointment or discharge or removal shall
20 be taken in an open meeting.
- 21 (7) To plan, conduct, or hear reports concerning investigations of alleged
22 criminal misconduct."

23 Section 3. G.S. 115C-521(c) reads as rewritten:

24 "(c) The building of all new school buildings and the repairing of all old school
25 buildings shall be under the control and direction of, and by contract with, the board of
26 education for which the building and repairing is done. If a board of education is
27 considering building a new school building to replace an existing school building, the
28 board shall not invest any construction money in the new building unless it submits to the
29 State Superintendent and the State Superintendent submits to the North Carolina
30 Historical Commission an analysis that compares the costs and feasibility of building the
31 new building and of renovating the existing building and that clearly indicates the
32 desirability of building the new building. No board of education shall invest any money
33 in any new building until it has (i) developed plans based upon a consideration of the
34 State Board's facilities guidelines, (ii) submitted these plans to the State Board for its
35 review and comments, and (iii) reviewed the plans based upon a consideration of the
36 comments it receives from the State Board. No local board of education shall contract for
37 more money than is made available for the erection of a new building. However, this
38 subsection shall not be construed so as to prevent boards of education from investing any
39 money in buildings that are being constructed pursuant to a continuing contract of
40 construction as provided for in G.S. 115C-441(c). All contracts for buildings shall be in
41 writing and all buildings shall be inspected, received, and approved by the local
42 superintendent and the architect before full payment is made therefor. Nothing in this

1 subsection shall prohibit boards of education from repairing and altering buildings with
2 the help of janitors and other regular employees of the board.

3 In the design and construction of new school buildings and in the renovation of
4 existing school buildings that are required to be designed by an architect or engineer
5 under G.S. 133-1.1, the local board of education shall participate in the planning and
6 review process of the Energy Guidelines for School Design and Construction that are
7 developed and maintained by the Department of Public Instruction and shall adopt local
8 energy-use goals for building design and operation that take into account local conditions
9 in an effort to reduce the impact of operation costs on local and State budgets. In the
10 design and construction of new school facilities and in the repair and renovation of
11 existing school facilities, the local board of education shall consider the placement and
12 design of windows to use the climate of North Carolina for both light and ventilation in
13 case of power shortages. A local board shall also consider the installation of solar energy
14 systems in the school facilities whenever practicable.

15 In the case of any school buildings erected, repaired, or equipped with any money
16 loaned or granted by the State to any local school administrative unit, ~~the State Board of~~
17 ~~Education, under any rules as it may deem advisable, may retain any amount not to exceed~~
18 ~~fifteen percent (15%) of the loan or grant, until the completed buildings, erected or repaired, in~~
19 ~~whole or in part, from the loan or grant funds, shall have been approved by a designated agent of~~
20 ~~the State Board of Education. Upon approval by the State Board of Education, the State~~
21 ~~Treasurer may pay the balance of the loan or grant to the treasurer of the local school~~
22 ~~administrative unit for which the loan or grant was made.~~ no board of education shall invest
23 any money until it has (i) developed plans based upon a consideration of the State Board's
24 facilities guidelines, (ii) submitted these plans to the State Board for its review and
25 comments, and (iii) reviewed the plans based upon a consideration of the comments it
26 receives from the State Board."

27 Section 4. This act is effective when it becomes law.